

Witness: Bruce Snyder

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

ENBRIDGE ENERGY COMPANY,  
INC., and ENBRIDGE MIDCOAST  
ENERGY, L.P., f/k/a ENBRIDGE  
MIDCOAST ENERGY, INC., f/k/a  
MIDCOAST ENERGY RESOURCES, INC.,

Plaintiffs,

vs. Case No. H-06-0657

UNITED STATES OF AMERICA,

Defendant.

DEPOSITION OF BRUCE SNYDER, a witness,  
taken on behalf of the Defendant, pursuant to  
Subpoena, on the 6th day of February, 2007, at the  
Charles E. Whittaker Courthouse, 400 East 9th  
Street, Kansas City, Missouri, before

GAIL L. RIEDE,

of AAA Court Reporting Company, a Certified Court  
Reporter of the State of Missouri.

APPEARANCES

For the Plaintiffs:

MR. KARL S. STERN  
MS. EMILY W. PIPKIN  
VINSON & ELKINS, LLP  
1001 Fannin Street, Suite 2300  
Houston, Texas 77002-6760

For the Defendant:

MR. DAVID B. COFFIN  
MR. HERB LINDER  
UNITED STATES DEPARTMENT OF JUSTICE  
717 North Harwood, Suite 400  
Dallas, Texas 75201

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214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES (Continued)</p> <p>2 For the Internal Revenue Service: 3 MR. KEVIN G. CROKE 4 SPECIAL TRIAL ATTORNEY 5 160 Spear Street, Suite 9000 6 San Francisco, California 94105</p> <p>7 MS. YVONNE M. PETERS 8 OFFICE OF CHIEF COUNSEL 9 915 Second Avenue, Room 2710 10 Seattle, Washington 98174</p> <p>11 For Ernst &amp; Young: 12 MS. SUSAN E. SEABROOK 13 LATHAM &amp; WATKINS, LLP 14 555 Eleventh Street, N.W., Suite 1000 15 Washington, D.C., 20004-1304</p> <p>16 STIPULATIONS 17 It was stipulated by and between 18 counsel and the witness that the presentment of 19 this deposition to the witness by the officer 20 is expressly waived.</p>	<p style="text-align: right;">Page 4</p> <p>1 (The deposition commenced at 10:39 2 a.m.)</p> <p>3 BRUCE SNYDER, 4 a witness, being first duly sworn, testified 5 under oath as follows:</p> <p>6 MR. COFFIN: As a house cleaning 7 matter, or housekeeping matter, we have 8 stipulated, haven't we, Mr. Stern, that we can 9 use Mr. Snyder's interview transcripts just as 10 if they were taken as a deposition in this 11 case?</p> <p>12 MR. STERN: And he was unavailable to 13 testify at trial, yes.</p> <p>14 MR. COFFIN: The government does not 15 say that it will not cover areas that were not 16 covered in the interview transcripts, but that 17 we have agreed that we could use the 18 transcripts in this case.</p> <p>19 Is that correct?</p> <p>20 MR. STERN: That's correct.</p> <p>21 MR. COFFIN: Ms. Seabrook, do you have 22 any housekeeping matters?</p> <p>23 MS. SEABROOK: I guess I would just 24 point that there has been an order entered by 25 The Court with respect to Bruce being able to</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX 2 WITNESS: BRUCE SNYDER PAGE: 3 Examination by Mr. Coffin 7 4 Examination by Mr. Stern 129 5 Re-examination by Mr. Coffin 153 6 Re-examination by Mr. Stern 158 7 Further examination by Mr. Coffin 159 8 EXHIBITS: IDENTIFIED: 9 1 - DOJ2450-52 9/7/00 Fax to Fox from Teig 159 10 PREVIOUSLY MARKED EXHIBITS: 11 26 - DOJ10815-17 Fax to Witness fr Hoffman 24 12 100 - PWC048-050 1/27/03 E-ml Kaitson fr Wilcox 38 13 105 - DOJ1112 E-mail between Midcoast &amp; PWC 41 14 159 - PWC363-388 125 15 201 - DOJ28442-8455 PWC Employees' notes 122 16 225 - E&amp;Y Timekeeping system printouts 42 17 226 - DOJ4165 Final financial statement 99 18 227 - DOJ4390 10/31/98 Billing stmt to Langley 72 19 228 - DOJ4527 3/21/00 E-mail to Wit fr Hoffman 73 20 229 - DOJ04528-29 Series of e-mails 74 21 230 - DOJ3965-3969 1999 Engagement letter 76 22 231 - DOJ10741-43 E-mails Fox &amp; Palmisano 80 23 232 - DOJ4172-74 9/7/00 E-mail EY &amp; Teig 102 24 233 - DOJ4146-49 8/22/00 Memo to Lacy 83 25 234 - DOJ4156-57 8/28/00 Letter to Teig fr Wit 91 26 235 - DOJ4158-60 E-mail and Memo 95 27 236 - DOJ4161-64 9/1/00 E-mail to Teig fr Lacy 96 28 237 - DOJ4166-67 E-mail to Teig from Lacy 100 29 238 - DOJ4168-71 9/7/00 E-mail to Teig fr Lacy 105 30 240 - DOJ4175 9/8/00 E-mail to Lacy from Fox 107 31 241 - DOJ 4336 9/8/00 Invoice to K-Pipe 107 32 242 - DOJ3970 9/8/00 Letter to Lacy fr Austin 108 33 244 - DOJ4152-55 9/13/00 Memo to Lacy fr Teig 109 34 246 - DOJ4416 9/14/00 E-mail to Lacy fr Fox 110 35 247 - DOJ3972-74 9/15/00 Ltr to Austin fr Wit 113 36 249 - DOJ7895-7898 Ltr to Manatt fr K-Pipe 115 37 250 - DOJ15265-271 11/21/00 Ltr to K-P fr Man 116 38 252 - DOJ7894 E-mails 116 39 253 - DOJ3971 10/10/00 Ltr to Wit from Austin 117 40 254 - DOJ7602-7667 1999 K-Pipe tax return 118</p>	<p style="text-align: right;">Page 5</p> <p>1 testify in connection with information that 2 would otherwise be covered by 7219, and also 3 that there has been an assertion of a section 4 7525 privilege by Ernst &amp; Young's former client 5 in this matter. So there are certain areas of 6 inquiry that Mr. Snyder may be precluded from 7 talking about in this deposition.</p> <p>8 MR. STERN: Who is the former client 9 that has asserted the privilege?</p> <p>10 MS. SEABROOK: Dennis Langley of the 11 Bishop Group, I believe.</p> <p>12 Is that right?</p> <p>13 THE WITNESS: Yes.</p> <p>14 MR. COFFIN: I believe you have 15 referred section 7216 instead of 7219?</p> <p>16 MS. SEABROOK: I'm sorry, yes, thank 17 you.</p> <p>18 MR. STERN: Dennis Langley was the 19 client, is that what you're saying?</p> <p>20 MS. SEABROOK: That's the individual. 21 I believe the client was the Bishop Group.</p> <p>22 MR. STERN: The Bishop Group, which, 23 as I understand it, is no longer represented or 24 owned by Mr. Langley, asserted this privilege?</p> <p>25 MS. SEABROOK: I believe so.</p>

2 (Pages 2 to 5)

HUNDT REPORTING  
214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 6</p> <p>1        THE WITNESS: Yes.    2        MS. SEABROOK: This is several years    3        old.    4        MR. STERN: Okay.    5        MR. COFFIN: I think the government's    6        position would be that the privilege doesn't    7        apply in tax shelter transactions and that    8        would be our current position. And I    9        understand you may go ahead and assert the    10        privilege. And certainly I am not going to    11        twist anybody's arm to testify. But if we have    12        to take that up with The Court later, we can do    13        that.    14        MS. SEABROOK: Sure. No, I think that    15        makes sense. And we will just be clear to be    16        very definite about what we're talking about,    17        because I think some of the information -- this    18        is a client that had been a client for years,    19        so there is advice provided that's not directly    20        connected to this particular transaction that    21        would be -- certainly not be the type of    22        information that you are talking about.    23        MR. COFFIN: I understand. So I will    24        count on you -- if I ask a question that you    25        think that -- I will count on you to raise the</p>	<p style="text-align: right;">Page 8</p> <p>1        the rest room.    2        Your attorney may raise some    3        objections, but I would ask that unless she    4        asks you not to answer, that you go ahead and    5        answer. Okay? Do you understand those rules?    6        A. Yes.    7        Q. Mr. Snyder, do you have any medical condition    8        or any medication that would prohibit you from    9        understanding the questions that I'm going to    10        ask today?    11        A. No.    12        Q. Where are you currently employed?    13        A. I am employed at -- actually, I'm a partner at    14        Ernst &amp; Young LLP. My office is here in Kansas    15        City, Missouri.    16        Q. I think you distinguished -- you are not an    17        employee of Ernst &amp; Young anymore; is that    18        correct?    19        A. I am a partner.    20        Q. I guess that would mean you are an equity owner    21        in the firm?    22        A. Yes.    23        Q. How long have you been with Ernst &amp; Young?    24        A. Nineteen years.    25        Q. What are your current responsibilities?</p>
<p style="text-align: right;">Page 7</p> <p>1        privilege, but I'm going to ask away.    2        EXAMINATION BY MR. COFFIN:    3        Q. Are you ready, Mr. Snyder?    4        A. Sure.    5        Q. Would you please state your name for the    6        record.    7        A. Bruce Snyder.    8        Q. Mr. Snyder, my name is David Coffin. I'm with    9        the Department of Justice, Tax Division, and I    10        represent the United States in this matter.    11        Have you ever given a deposition    12        before?    13        A. Yes.    14        Q. How many instances?    15        A. I believe two.    16        Q. I would think that you would understand the    17        ground rules. Basically, I ask the questions,    18        you answer. I would ask you not to interrupt    19        me and I'll try to do the same.    20        If you don't understand a question,    21        just ask me to restate it --    22        A. Okay.    23        Q. -- I would be happy to.    24        If you need a break, we'll try to take    25        a break, if we can get a personal escort out to</p>	<p style="text-align: right;">Page 9</p> <p>1        A. I am the tax leader here in Kansas City.    2        Q. How long have you been the tax leader?    3        A. 2-1/2 years.    4        Q. What are your current responsibilities as the    5        tax leader?    6        A. I oversee the tax function of the Kansas City    7        office.    8        Q. Now, can you describe the tax function? Is    9        there a compliance area and a consulting area?    10        A. We have a compliance area and we have a tax    11        advisory area.    12        Q. Are both of those areas under your control or    13        command?    14        A. Yes.    15        Q. Prior to becoming the tax leader, what position    16        did you hold with Ernst &amp; Young?    17        A. Prior to that, I was a tax partner of Ernst &amp;    18        Young. Specifically, my role was as a tax    19        service coordinator.    20        Q. How were your duties as the tax service    21        coordinator, how were those duties different    22        than your duties as a tax leader?    23        A. I'm still a tax service coordinator, but I've    24        also taken on the additional leadership role of    25        the Kansas City office for tax.</p>

3 (Pages 6 to 9)

HUNDT REPORTING  
 214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 10</p> <p>1 Q. Did somebody step down for you to take that?      2 A. Actually, he was promoted to an area role.      3 Q. Give me your educational history, beginning      4 with where you graduated from high school.      5 A. Lyons High School in Lyons, Kansas. The      6 University of Kansas, with a Bachelor of      7 Science in accounting and business      8 administration.      9 Q. In what year?      10 A. 1986.      11 An MBA from the University of Kansas,      12 December of 1987.      13 Q. Have you been employed by Ernst &amp; Young since      14 then?      15 A. I have.      16 Q. Would that begin after you got your master's or      17 when you got your undergraduate degree?      18 A. After I received my master's degree.      19 Q. You have progressed through the positions or      20 designations of staff, senior, manager --      21 A. Yes.      22 Q. -- partner.      23 What year did you become partner?      24 A. October 1st of 2000.      25 Q. You are a certified public accountant, correct?</p>	<p style="text-align: right;">Page 12</p> <p>1 correct?      2 A. Yes.      3 Q. And your firm did tax work for the Bishop      4 Group, Limited; is that right?      5 A. That's right.      6 Q. How long had Ernst &amp; Young done the tax work      7 for the Bishop Group as of 1999?      8 A. I would say probably 12 to 14 years.      9 Q. Prior to 1999?      10 A. Yes. I think it was a client of our Wichita      11 office, and then at some point they moved to      12 Kansas City, I'm not sure when.      13 Q. When did you begin working on the tax --      14 performing tax work for the Bishop Group?      15 A. It would have been in late 1994.      16 Q. Had the firm only done tax work for Bishop or      17 was there audit work done as well?      18 A. There was also financial statement and      19 regulatory audits performed.      20 Q. On a regular basis?      21 A. Yes.      22 Q. Annually?      23 A. Yes.      24 Q. He didn't have any SEC filings that he --      25 A. No, it was a private company. But there were a</p>
<p style="text-align: right;">Page 11</p> <p>1 A. Yes.      2 Q. What year did you get that designation?      3 A. 1990.      4 Q. Any other professional licenses or      5 accreditations?      6 A. No. I'm licensed to practice in Kansas and      7 Missouri.      8 Q. Have you reviewed anything to prepare for this      9 deposition?      10 A. I reviewed my prior deposition.      11 Q. Are you talking about your interview with the      12 IRS?      13 A. Yes.      14 Q. Did that just encompass reviewing the      15 transcript or did you look at the exhibits that      16 came along or were used during that interview?      17 A. I primarily looked at the transcript. I looked      18 at the exhibits which were follow-ups to the      19 interview with the IRS.      20 Q. How much time did you spend reviewing your      21 transcript, in hours?      22 A. It was probably two to three hours.      23 Q. Total, in everything?      24 A. Yes.      25 Q. In 1999, you were familiar with Dennis Langley,</p>	<p style="text-align: right;">Page 13</p> <p>1 lot of regulatory filings that were done.      2 Q. Who was the regulating body?      3 A. I believe both FERC and the KCC.      4 Q. What is that?      5 A. Kansas Corporation Commission.      6 Q. And they required annually that Mr. Langley      7 obtain financial statement certification of the      8 Bishop Group's financial statements?      9 A. I think so. That's not my area of expertise.      10 Q. Do you recall, when you began working on the      11 Bishop Group, was Ernst &amp; Young performing      12 financial statement audits at that time      13 already?      14 A. Yes.      15 Q. When did that end? When did Ernst &amp; Young      16 cease doing financial statement audits of the      17 Bishop Group?      18 A. I believe the last audit was performed with      19 respect to the calendar year ended December      20 31st of 1998.      21 Q. I take it there wasn't an audit in '99 because      22 he sold the companies?      23 A. That's correct.      24 Q. Were the auditors in communication with      25 Mr. Langley throughout the year related to the</p>

4 ( Pages 10 to 13 )

HUNDT REPORTING  
 214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 14</p> <p>1 audit work that they did, or was this one where 2 they would come in at the end of the year and 3 do the audit in the first part of the -- 4 A. I think they would generally do interim work in 5 the October time frame, and then would finalize 6 the audit sometime during -- after the end of 7 the year. 8 Q. Did you ever have any occasion to review the 9 audit work papers? 10 A. Yes. We would do -- we would use a lot of the 11 audit work papers for preparation of the tax 12 returns and we would also assist with the 13 income tax provision that was part of the 14 audit. 15 Q. What about the tax work, was that something 16 that Ernst &amp; Young would communicate with 17 Mr. Langley throughout the year or something 18 only done around tax preparation time? 19 A. Generally, we did not communicate with 20 Mr. Langley. Most of the communication was 21 with the chief financial officer. 22 Q. Steve Korb? 23 A. Steve, I don't believe, was the chief financial 24 officer. It was a gentleman by the name of 25 Terry Phipps. And then at some point, I can't</p>	<p style="text-align: right;">Page 16</p> <p>1 A. The company's returns due to be filed? 2 Q. Yes. 3 A. Generally, by September 15 for the federal 4 return, and then the state returns generally by 5 October 15 of the subsequent year, on 6 extension. 7 Q. Did he have a calendar year-end or did the 8 Bishop companies have a calendar year-end? 9 A. Yes. 10 I believe there were partnership 11 returns also that were required to be filed. 12 Actually, they would have been October 15th on 13 final extension. 14 Q. That generally covers most of the filings, what 15 you just described? 16 A. Yes. 17 Q. Was Ernst &amp; Young preparing any other returns 18 other than the income tax returns? 19 A. No. 20 Q. I want to focus your attention to the year 21 1999. 22 When did you -- I assume you heard 23 sometime in 1999 that Mr. Langley wanted to 24 sell his companies? 25 A. Correct.</p>
<p style="text-align: right;">Page 15</p> <p>1 remember when, Terry left the company and it 2 became Howard Lubow. 3 Q. L-u-b-o-w? 4 A. L-u-b-o-w I believe is correct. 5 And he hired an internal tax person 6 named Jeff Weiner. 7 Q. W-e-i-n-e-r? 8 A. I think so. 9 There was another accountant who we 10 also worked with to get a lot of the 11 information, her name was Pam, and I can't 12 recall the last name. But I believe she left 13 at some point in time, I can't remember when. 14 Q. So going back to -- you said I think earlier 15 that you normally -- let me ask you again, 16 when, again, did Ernst &amp; Young typically deal 17 with Mr. Langley or his employees regarding the 18 preparation of income tax returns, would it be 19 during the tax year or following the tax year 20 whenever the filings were due? 21 A. It would primarily be after the tax year, 22 usually after the financial statement audit was 23 done. 24 Q. When were his returns due to be filed -- or 25 when were the Bishop Group's --</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Or his company? 2 A. Correct. 3 Q. When would that have been during the calendar 4 year, do you know? 5 A. I think he had been -- I think this was in my 6 prior deposition, that he had been trying to 7 sell the company for the last several years or 8 looking at potential buyers for the company. 9 Q. So you would have learned that before 1999? 10 A. Right. 11 Q. You just heard that Mr. Langley wanted to sell 12 his stock in the Bishop Group, Limited, 13 sometime during your work prior to 1999? 14 A. Yes. 15 Q. Was Ernst &amp; Young engaged to perform services 16 in conjunction with the sale of his company 17 prior to 1999? Was there any work that Ernst &amp; 18 Young did? 19 A. We were generally engaged to provide tax 20 advisory services as part of the tax return 21 engagement and as part of being the overall tax 22 provider to the company. We were not 23 specifically and contractually engaged by 24 Mr. Langley personally to sell his company. 25 Q. So the engagement letter that Ernst &amp; Young had</p>

Witness: Bruce Snyder

<p style="text-align: right;">Page 18</p> <p>1 with the Bishop Group -- I assume there was an 2 engagement letter? 3 A. Yes. 4 Q. And did that cover also the tax advisory 5 services that anything -- that you might 6 perform or Ernst &amp; Young might perform for the 7 Bishop Group? 8 A. Correct. I believe there was a general 9 statement in the letters that talked about any 10 services outside of the general tax return 11 preparation would be billed at some hourly rate 12 or some percent of our standard rate. I don't 13 recall exactly what it said. 14 Q. Okay. 15 A. That was standard language in most engagement 16 letters. 17 Q. So was there ever an engagement letter between 18 Ernst &amp; Young and any -- either Langley or 19 Bishop Group where Ernst &amp; Young had agreed to 20 provide tax advisory services related to the 21 sale of Mr. Langley's stock? 22 A. No, I don't believe so. 23 Q. Ernst &amp; Young eventually did some work related 24 to that though, right? 25 A. Yes.</p>	<p style="text-align: right;">Page 20</p> <p>1 A. I know he had hired Chase Manhattan, I believe 2 it was, as an investment banker to look for a 3 buyer. 4 Q. That would have been sometime in '99? 5 A. Right. 6 Q. Do you recall any of the other entities who 7 were bidding on the company or were looking at 8 the company? 9 A. There was Enron, I recall them looking at the 10 company; there was -- Midcoast was another one; 11 and then this Fortrend was another party 12 that -- of interest. 13 Q. You didn't recall any other attempted or other 14 potential bidders or buyers? 15 A. Not off the top of my head, no. I'm sure there 16 were. 17 MS. SEABROOK: Are you asking him were 18 there or to identify them? 19 MR. COFFIN: I'm asking him if he 20 heard of any, was he aware of any. 21 A. I'm sure there were from time to time, but I 22 don't recall the names. 23 Q. (By Mr. Coffin) Do you know whether Langley 24 preferred a stock sale or an asset sale? 25 A. No, not really. I would assume a stock sale.</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. So how was that engagement -- was it ever 2 documented or what the agreement was between 3 the two, Mr. Langley and Ernst &amp; Young? 4 A. No, it would have just been under that general 5 tax advisory engagement letter. 6 Q. So Ernst &amp; Young or somebody at Ernst &amp; Young 7 determined that you would go ahead and do the 8 work and it would just fall under the other 9 engagement letter between Ernst &amp; Young and 10 Bishop Group? 11 A. Right. 12 Q. Do you remember when Ernst &amp; Young was first 13 engaged to perform any services in that regard, 14 as far as month or year? I mean, you mentioned 15 you knew that Langley wanted to sell his stock 16 prior to 1999. So my question goes more into 17 did Ernst &amp; Young perform any services related 18 to Langley's attempted sale prior to 1999? 19 A. It seems to me we would answer a lot of, you 20 know, one-off questions with respect to tax 21 treatment on various items. 22 Q. What-if type questions? 23 A. Right. 24 Q. When did you first hear that Langley had a 25 buyer for his stock?</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. But you never heard somebody come out and say, 2 We're absolutely going to do a stock sale, 3 we're not going to entertain any other offers 4 for an asset sale? 5 A. No. 6 Q. You said you were aware that Midcoast was a 7 buyer, was a potential buyer, of the stock of 8 Langley; is that correct? 9 A. Yes. 10 Q. What was your perception of Midcoast during the 11 bidding process? 12 A. What do you mean? 13 Q. Did you have a perception -- were they 14 aggressive or did you have any kind of 15 perception like that? 16 A. No, I don't believe so. 17 Q. When was the first time you recall Midcoast 18 being involved as a buyer or a potential buyer? 19 A. It probably would have been sometime during the 20 fall of 1999, maybe late summer or fall, August 21 or September probably. 22 Q. When you learned that Midcoast was a potential 23 buyer, was it your perception that they had 24 just bid or had they been in the bidding 25 process for some time?</p>

6 ( Pages 18 to 21 )

HUNDT REPORTING  
214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 22</p> <p>1 A. There was a lot of due diligence going on.      2 Q. On their part?      3 A. On their part.      4       Like I said, there were several other      5       bidders. They had a data room set up at a law      6       firm and a lot of our work was supporting      7       information for the data room that was pulled      8       from the tax return files.      9       I believe they also looked at a lot of      10      our audit work papers, but I wasn't directly      11      involved in pulling those.      12 Q. Were there any requests made, during Midcoast's      13      due diligence, to you to provide information?      14 A. There may have been. We provided a lot of the      15      information in the data room.      16 Q. What kind of information?      17 A. Prior tax returns filed, tax basis work papers,      18      depreciation work papers.      19 Q. I assume the audit side provided audited      20      financial statements?      21 A. And the audit work papers, I assume.      22 Q. Do you know if the audit work papers still      23      exist for as far back as 1999?      24 A. I really don't.      25 Q. During the due diligence process, did you talk</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Just over the telephone?      2 A. Perhaps.      3 Q. Generally, do you recall what the conversation      4      may have been surrounding?      5 A. No, I sure don't.      6 Q. Were you aware that Midcoast was pursuing the      7      stock of the Bishop Group?      8 A. I was aware that they were pursuing the      9      company.      10 Q. You weren't aware that they were attempting to      11      purchase the stock of the Bishop Group?      12        MR. STERN: Objection, form.      13 A. No, I was aware -- I was aware that they were      14      trying to acquire the business, whether it be      15      stock or assets.      16 Q. (By Mr. Coffin) Were you aware of any due      17      diligence conducted by the Bishop Group on      18      Midcoast?      19 A. I was not.      20 Q. Do you recall the first time you heard of      21      Fortrend?      22 A. I believe it was in August of 1999.      23 Q. We'll just go with that first exhibit. I'll      24      refer you to Government Exhibit 26. This is a      25      facsimile from Fortrend to you, Mr. Snyder,</p>
<p style="text-align: right;">Page 23</p> <p>1       to anybody from Midcoast?      2 A. I believe I may have spoken to their CFO. I      3      can't remember his name at the time.      4 Q. Was it Richard Robert?      5 A. That sounds familiar.      6 Q. At what level were you; were you a manager, a      7      senior manager, at that time?      8 A. I was a senior manager in 1999.      9 Q. Who did you report to?      10 A. I reported to Michael D. Carr, C-a-r-r. He was      11      the partner at the time.      12 Q. As far as managers go, did you have a      13      significant amount of responsibility in 1999?      14 A. Yes.      15 Q. Were you aware that you were going to make      16      partner the following year?      17 A. I was not aware.      18 Q. But they put quite a bit of responsibility on      19      senior managers?      20 A. Yes.      21 Q. Do you recall your conversation with      22      Mr. Robert?      23 A. No, I do not.      24 Q. Did you meet with him face-to-face?      25 A. I don't believe so.</p>	<p style="text-align: right;">Page 25</p> <p>1       with a cc to Tom Palmisano; is that correct?      2 A. Yes.      3 Q. Do you recall receiving this, Mr. Snyder?      4 A. Yes, I do.      5 Q. Mr. Hoffman under the Comments section says,      6      "Bruce, I enjoyed our conversation last week.      7      Sorry this is a little late. I wanted to make      8      sure I could get comments from others in my      9      firm that are out of the country right now."      10     So I assume you talked to Mr. Hoffman prior to      11      receiving this facsimile?      12 A. Yes, I believe so.      13 Q. Would that have been over the telephone or      14      face-to-face?      15 A. That would have been over the telephone. I've      16      never met Mr. Hoffman face-to-face.      17 Q. Did you ever form an impression of him at all?      18 A. Not really.      19 Q. How many times did you talk to him on the      20      telephone?      21 A. Probably just once or twice.      22 Q. What was discussed in those conversations?      23 A. I think there was an interest in acquiring the      24      Bishop Group.      25 Q. On whose part?</p>

7 ( Pages 22 to 25 )

HUNDT REPORTING  
 214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 26</p> <p>1 A. On Fortrend's or Hoffman's.      2 Q. Who else was on the telephone call along with      3 you and Mr. Hoffman? Was Mr. Palmisano on it?      4 A. I believe so.      5 Q. Did you form an impression as to who      6 Mr. Palmisano represented?      7 A. Price Waterhouse Coopers. I don't believe he      8 was a partner, I believe he was either a      9 manager or senior manager.      10 Q. Do you know, was he on the phone for the      11 benefit of a client, Mr. Palmisano?      12 A. I don't recall. I don't recall if he was on      13 the phone on behalf of Fortrend or some other      14 client, I really don't.      15 Q. Do you know if Mr. Hoffman and Mr. Palmisano      16 were in the same office when they called you or      17 was it a conference call type thing?      18 A. It was a conference call.      19 Q. Do you know who instigated the conference call,      20 or initiated?      21 A. I don't recall who initiated it. I know that      22 Steve Korb was also on the phone and I don't      23 recall who else was on the phone.      24 Q. You picked up the phone and all three of them      25 were on, is that how it worked?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. But that doesn't necessarily have anything to      2 do with Fortrend's ability to finance the      3 transaction. Would you agree with me?      4 A. I would agree with that.      5 Q. So again, why would you be involved in the      6 phone conversation?      7 A. I don't know, other than I was a person from      8 Ernst &amp; Young, and the representation, I      9 believe, that they had made to the Bishop Group      10 was that they had worked with Ernst &amp; Young in      11 the past.      12 Q. In what way had they worked with Ernst &amp; Young?      13 A. Presumably buying other companies.      14 Q. Were they describing to you intermediary type      15 transactions during the conversation?      16 A. I don't recall.      17 Q. Did you become comfortable with Fortrend, as      18 Bishop Group's tax advisor, because of that      19 phone call?      20 A. No, I don't believe so.      21 Q. They also faxed some firm history type      22 documentation that came with that, with      23 Government Exhibit 26, correct? If you turn      24 the page.      25 A. I believe that's correct.</p>
<p style="text-align: right;">Page 27</p> <p>1 A. I don't recall if it was a prearranged phone      2 call or it was a -- I just happened to pick up      3 the phone, I really don't.      4 Q. Did you know at that time that Fortrend was      5 interested in buying the stock of the Bishop      6 Group so they could turn around and sell the      7 assets to Midcoast?      8 A. I didn't know at that time.      9 Q. What did you know at that time?      10 A. I just knew that -- it seemed like to me that      11 they were trying to get credibility with      12 respect to transactions --      13 Q. I don't --      14 A. -- as I recall the discussion, because the      15 discussion centered around other people in our      16 firm that they had worked with.      17 Q. What kind of credibility were they looking for?      18 A. I think just trying to qualify them as a buyer.      19 Q. Whether they had the financial resources to      20 complete a transaction?      21 A. Exactly.      22 Q. Why would you have specifically been brought in      23 on this phone conversation?      24 A. Probably because I was the tax advisor to      25 Bishop.</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. Did you review this -- these documents attached      2 to Government Exhibit 26?      3 A. Just the second page of the fax. Is this what      4 you're referring to?      5 Q. Yes, the second page and the third page.      6 A. Yes, I reviewed that.      7 Q. Did you become comfortable with Fortrend after      8 reviewing this firm history and text regarding      9 Fortrend?      10 A. No, I believe I called several people mentioned      11 in this fax regarding the company.      12 Q. There is Al -- is it Hernandez, with the Hawaii      13 office? What does that say?      14 A. It looks like Hernandez.      15 Q. Did you call Mr. Hernandez?      16 A. I did not.      17 Q. There's a Mike Evans in San Francisco. Did you      18 call Mr. Evans?      19 A. No.      20 The only one I called on here was -- I      21 guess on this fax was Harvey Berenson in New      22 York --      23 Q. Did you know --      24 A. -- because I knew Harvey.      25 Q. Go ahead.</p>

8 ( Pages 26 to 29 )

HUNDT REPORTING  
 214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 30</p> <p>1 A. I knew Harvey.      2 Q. How did you know Mr. Berenson?      3 A. I believe I had worked with him on several      4 transactions or projects not related to Bishop      5 in the past.      6 Q. Did Mr. Berenson, in New York, did he advise      7 you that he was aware or knew of Fortrend?      8 A. I don't believe he had specific knowledge of      9 Fortrend as they had stated here.      10 Q. So I assume you performed additional due      11 diligence on Fortrend?      12 A. I did not.      13 Q. So Mr. Berenson knew nothing about Fortrend,      14 had no knowledge of Fortrend at that time?      15 A. I don't recall if he had never heard of them or      16 he had just never worked with them. I don't      17 recall what the discussion was. But I know      18 that he had not been specifically involved in a      19 transaction that they had done work on.      20 Q. At this point then, after you made the phone      21 call to Mr. Berenson, were you comfortable with      22 Fortrend at that time or comfortable with your      23 knowledge of Fortrend at the time?      24 A. From the standpoint of?      25 Q. Being a potential buyer of the stock.</p>	<p style="text-align: right;">Page 32</p> <p>1 transactions?      2 A. There could have been. I don't recall exactly      3 what was said.      4 Q. What do you know about intermediary and midco      5 transactions?      6 MS. SEABROOK: As of today?      7 Q. (By Mr. Coffin) As of today?      8 A. As a technical matter?      9 Q. Yes.      10 A. Are you referring to the listed transaction or      11 the notice that was issued?      12 Q. Yes.      13 A. In which notice?      14 Q. 2001-16.      15 A. It's generally a transaction I think where a      16 seller goes out and sells his stock to a third      17 party. At some point in time, the third party      18 turns around and sells the assets of the      19 company to an ultimate buyer of those assets.      20 Q. Generally, what is the purpose of the      21 transaction?      22 A. Generally, the purpose of the transaction is to      23 provide the seller a stock sale which provides      24 favorable capital gains rate on that stock      25 sale, and to provide the buyer of the assets a</p>
<p style="text-align: right;">Page 31</p> <p>1 A. No, I wasn't. And I didn't necessarily -- now,      2 I was doing this as really kind of one-off      3 advice to the client and I was not engaged to      4 perform due diligence on Fortrend. So I wasn't      5 required to express an opinion level on how      6 comfortable I was with them. I assumed that      7 perhaps the company did their own due      8 diligence, but I wasn't involved specifically      9 in that.      10 Q. Well, you were brought into the phone      11 conversation, then you were sent the fax, so I      12 assume you reported back to Mr. Korb or      13 somebody at Bishop that you were either      14 comfortable with Fortrend or you hadn't heard      15 of Fortrend. Is that right?      16 A. I likely reported back what Harvey Berenson had      17 told me, that he had not actually worked with      18 Fortrend.      19 Q. Did you make any kind of recommendation as to      20 whether the Bishop Group should go forward in      21 negotiations with Fortrend?      22 A. No, I wouldn't have made a recommendation.      23 Q. Now, was there any discussion with Mr. Berenson      24 or Mr. Hoffman or Mr. Palmisano at the time      25 regarding intermediary transactions or mid-co</p>	<p style="text-align: right;">Page 33</p> <p>1 step-up in the basis of those assets.      2 Q. The notice came out in 2001, is that correct,      3 2001-16, somewhere around that time?      4 A. Approximately.      5 Q. After this transaction, the stock sale took      6 place in 1999, correct?      7 A. I think that's right.      8 Q. But back in 1999, were you aware of those types      9 of transactions being marketed or sold?      10 A. I was not specifically aware of those      11 transactions being sold. Our firm was not      12 engaged or promoting those types of      13 transactions.      14 Q. You said you were not specifically. How about      15 generally were you aware, was there talk in      16 accounting circles and things like that about      17 these types of transactions at that time?      18 A. I believe our national office had heard of the      19 transactions. I think they were still in the      20 process of maybe perhaps reviewing those      21 transactions and were not -- hadn't formed any      22 sort of opinion on those types of transactions.      23 Q. Now, did you have any conversation with      24 Mr. Berenson at that time about the fact that      25 Ernst &amp; Young was looking at these transactions</p>

9 (Pages 30 to 33)

HUNDT REPORTING  
 214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 34</p> <p>1 and they hadn't yet formed an opinion?</p> <p>2 A. Perhaps.</p> <p>3 Q. Now, did you ever have any other occasion to</p> <p>4 talk to Mr. Hoffman after this facsimile was</p> <p>5 sent?</p> <p>6 A. I believe we talked to him perhaps one or two</p> <p>7 other times with respect to some administrative</p> <p>8 matters, such as return preparation and things</p> <p>9 like that. He left the company at some point,</p> <p>10 I'm not sure when. But at some point, we were</p> <p>11 dealing with another gentleman in getting the</p> <p>12 returns prepared.</p> <p>13 Q. But as far as Mr. -- your conversations with</p> <p>14 Mr. Hoffman, and prior to November 8th of 1999,</p> <p>15 did you have any further conversation with</p> <p>16 Mr. Hoffman subsequent to that, subsequent to</p> <p>17 August -- subsequent to receiving this</p> <p>18 facsimile?</p> <p>19 A. I don't recall that I did.</p> <p>20 Q. Did Mr. Hoffman, in your phone conversation</p> <p>21 with him, or your telephone conference with</p> <p>22 him, did he set out how Fortrend could benefit</p> <p>23 Mr. Langley or Bishop?</p> <p>24 A. He could have. I don't recall exactly what was</p> <p>25 said.</p>	<p style="text-align: right;">Page 36</p> <p>1 A. I believe he appeared to be an advocate.</p> <p>2 Q. (By Mr. Coffin) So as far as you knew,</p> <p>3 Mr. Palmisano was not there really to evaluate</p> <p>4 whether to use Fortrend or not, but rather he</p> <p>5 was there to try to convince you that Fortrend</p> <p>6 would be a good buyer of the stock?</p> <p>7 MR. STERN: Objection, form.</p> <p>8 A. That could have been.</p> <p>9 Q. (By Mr. Coffin) And you mentioned earlier that</p> <p>10 E&amp;Y was not asked to do any due diligence into</p> <p>11 Fortrend, correct?</p> <p>12 A. Other than just checking these references, I</p> <p>13 believe.</p> <p>14 Q. Would that have been Mr. Korb that would have</p> <p>15 asked you to do that?</p> <p>16 A. Yes.</p> <p>17 Q. Was Mr. Lubow the CFO in 1999?</p> <p>18 A. He was.</p> <p>19 Q. Are you aware of any due diligence conducted by</p> <p>20 Langley or his representatives on Fortrend?</p> <p>21 A. Not specifically, no.</p> <p>22 Q. How about generally?</p> <p>23 A. I would assume that there was some done, but I</p> <p>24 don't know what it was.</p> <p>25 Q. Then so after your conversation with</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Do you recall generally what was discussed?</p> <p>2 A. Generally, it had to do with the sale of the</p> <p>3 company or the --</p> <p>4 Q. Was an intermediary or midco transaction</p> <p>5 discussed in that conversation?</p> <p>6 A. I don't recall specifically what was discussed.</p> <p>7 It's possible.</p> <p>8 Q. Generally, do you recall that it was discussed?</p> <p>9 You said "specifically," I'm just saying</p> <p>10 generally.</p> <p>11 A. It's possible it was discussed, but I don't</p> <p>12 specifically recall that it was discussed.</p> <p>13 Q. Mr. Palmisano, you said he was on that</p> <p>14 conversation as well?</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall what Mr. Palmisano was -- what</p> <p>17 was his role in the telephone conference?</p> <p>18 A. I don't recall what his specific role was. He</p> <p>19 had presumably worked with Fortrend in the</p> <p>20 past.</p> <p>21 Q. Was he kind of helping to sell the deal or</p> <p>22 trying to convince you, was he trying to -- did</p> <p>23 he appear to be an advocate on behalf of</p> <p>24 Fortrend?</p> <p>25 MR. STERN: Objection, form.</p>	<p style="text-align: right;">Page 37</p> <p>1 Mr. Hoffman and you may have reported to</p> <p>2 Mr. Korb that you didn't -- you hadn't heard of</p> <p>3 Fortrend or nobody in E&amp;Y had heard of</p> <p>4 Fortrend, then when was the next time that you</p> <p>5 would have heard that Fortrend was in the</p> <p>6 transaction?</p> <p>7 MR. STERN: Objection, form.</p> <p>8 A. I think my comment was nobody in the firm had</p> <p>9 worked with Fortrend on a transaction. I don't</p> <p>10 recall whether anyone had heard of Fortrend or</p> <p>11 not.</p> <p>12 Q. (By Mr. Coffin) So what would have been the</p> <p>13 next step after advising Mr. Korb that nobody</p> <p>14 had worked with Fortrend from Ernst &amp; Young?</p> <p>15 A. On our part, I don't recall if there was a next</p> <p>16 step.</p> <p>17 Q. When did you hear, subsequent to that, that</p> <p>18 Fortrend was a bidder in the stock of the</p> <p>19 Bishop Group?</p> <p>20 A. I don't recall exactly when that was. It would</p> <p>21 have been sometime thereafter I presume.</p> <p>22 Q. We'll go through the billings, the timekeeping</p> <p>23 records, and maybe we'll nail that down.</p> <p>24 Was Ernst &amp; Young involved in any</p> <p>25 negotiations of the stock purchase agreement</p>

Witness: Bruce Snyder

<p style="text-align: right;">Page 38</p> <p>1    between Langley and Fortrend?</p> <p>2    A. I know that we reviewed some stock purchase 3    agreements. As far as purchase price, is that 4    what you're asking?</p> <p>5    Q. No, not necessarily purchase price. Any of the 6    provisions in the stock purchase agreement. 7    You said you did review --</p> <p>8    A. We reviewed several agreements. I don't recall 9    specifically whether we reviewed that 10   agreement, we may have. It would have been 11   more for tax issues.</p> <p>12   MS. SEABROOK: The question was 13   negotiate, though, right?</p> <p>14   MR. COFFIN: Yes. Involved in any of 15   the negotiation of any of the provisions.</p> <p>16   A. We were not involved in the negotiation, no.</p> <p>17   Q. (By Mr. Coffin) But you would have reviewed 18   provisions to the stock purchase agreement, or 19   any agreement for that matter, and given your 20   comments?</p> <p>21   A. We could have provided some comments.</p> <p>22   Q. Go ahead and turn to the next exhibit, please, 23   which is Government Exhibit 100.</p> <p>24   A. (Witness complies.)</p> <p>25   Q. Now, Mr. Snyder, I know you probably haven't</p>	<p style="text-align: right;">Page 40</p> <p>1    way down past the 2, past the A and B, and it 2    says, "Note" -- and again, this is an e-mail 3    from -- I think it's from Gary Wilcox to Chris 4    Kaitson of Midcoast. It says, "Note that the 5    option agreement must not be guaranteed by 6    Midcoast pursuant to the parent guarantee. 7    There is no need for that anyway. If KPC 8    doesn't exercise the option, there will be a 9    parent guarantee of KPC's obligation under the 10   KPC PDA. If the option is exercised, KPC must 11   produce 13.75 million in cash."</p> <p>12   Now, my question to you is simply, do 13   you remember any kind of tax advice you would 14   have given with regard to these issues 15   discussed?</p> <p>16   A. I don't remember that, no.</p> <p>17   Q. Turn the page to PWC 50.</p> <p>18   A. (Witness complies.)</p> <p>19   Q. I believe this is the same e-mail. Item No. 3, 20   Stock Purchase Agreement, it says, "It is 21   critical Midcoast's tax position that the 22   Bishop Group, Limited, is not liquidated by 23   Fortrend for at least two years." Do you 24   remember discussing tax issues related to that 25   statement with Langley?</p>
<p style="text-align: right;">Page 39</p> <p>1    seen this e-mail, but it's from -- it's between 2    PWC and Richard Robert. And the text of the 3    e-mail says, "There has been a change to the 4    deal based on PWC's objection to characterizing 5    the supplemental payment of \$13.75 as capital 6    gain. Dennis has agreed to report the amount 7    as ordinary income."</p> <p>8    Do you recall that issue arising 9    during your work with --</p> <p>10   A. I don't recall what that is.</p> <p>11   Q. You don't remember anything about a 13.75 12   supplemental payment?</p> <p>13   A. Not off the top of my head, no.</p> <p>14   Q. Do you remember anything about a \$10 million 15   supplemental payment, \$10.75 million 16   supplemental payment?</p> <p>17   A. Not off the top of my head, I don't.</p> <p>18   Q. Turn the page of Exhibit 100 to -- do you see 19   some Bates numbers in the bottom right? There 20   are several of them. We will use the PWC bates 21   numbers, 049.</p> <p>22   A. I'm sorry, where are you looking? Oh, 049, 23   okay.</p> <p>24   Q. If you will look at -- underneath No. 1 it 25   says, "Stock Purchase Agreement." Go all the</p>	<p style="text-align: right;">Page 41</p> <p>1    A. No, I do not.</p> <p>2    Q. Underneath that, item No. 4, under Purchase and 3    Sale Agreement, it says, "I will be sending 4    comments on this agreement shortly, but I would 5    like K-Pipe to think about retaining some of 6    the receivables that are currently in KPC." Do 7    you ever remember any discussion regarding 8    that?</p> <p>9    A. No, I sure don't.</p> <p>10   Q. Turn the page to Government Exhibit 105, 11   please.</p> <p>12   A. (Witness complies.)</p> <p>13   Q. This is an e-mail from -- between various 14   parties, it looks like an e-mail string, 15   involving Midcoast and PWC.</p> <p>16   The second paragraph says, "The third 17   guarantee gave me the most heartburn. 18   Obviously, I do not want to see Midcoast, the 19   asset buyer, providing a guarantee of certain 20   obligations under the stock purchase agreement. 21   However, it became very clear that Langley 22   would not do the deal without it."</p> <p>23   Do you recall any advisory services 24   you gave with regard to those issues?</p> <p>25   A. No, I don't.</p>

Witness: Bruce Snyder

<p style="text-align: right;">Page 42</p> <p>1 Q. Turn on to Government Exhibit 225, please.    2 A. (Witness complies.)    3 Q. Could you thumb through that and just tell me,    4 give me a description of what that is, please.    5 I believe it's an Ernst &amp; Young document; is    6 that correct?    7 A. Yes, it looks like an output from our    8 timekeeping and reporting system.    9 Q. It's not necessarily an invoice or billing    10 statement; is that right?    11 A. No, it is not an invoice or a billing    12 statement, that's correct.    13 Q. Is this something that is used to manage the    14 costs and fees associated with an engagement?    15 A. It's used to manage the costs and fees, and    16 it's also used to actually provide description    17 and to bill the client.    18 Q. Turn to the second page of this statement.    19 A. Page 2?    20 Q. Yes, page 2, please.    21 A. Okay.    22 Q. I believe this is -- from looking at the first    23 page it looks like entries that you would have    24 made from June of '99 through August of '99.    25 A. Yes.</p>	<p style="text-align: right;">Page 44</p> <p>1 your testimony earlier, you were aware of what    2 intermediary transactions were at the time?    3 A. Yes.    4 Q. And you were discussing with EY national and --    5 who all at EY national were you discussing    6 these with?    7 A. Let's see, there was Harvey Berenson, I know,    8 was on the phone. And then I believe there was    9 a partner by the name of Elio Casinelli, who I    10 had discussed with. I don't recall if it was    11 this certain point in time, but I know at some    12 point I did have discussions Elio. And then    13 perhaps others.    14 Q. On the Government Exhibit 26 there was a Jay    15 Zuckerman mentioned there?    16 A. Jay Zuckerman.    17 Q. Did Mr. Berenson indicate that Mr. Zuckerman    18 had worked with Fortrend at all?    19 A. He did not.    20 Q. Did he mention Mr. Zuckerman in your    21 conversation at all during that time?    22 A. I don't recall.    23 Q. Then the rest of your entry there, it says,    24 "Follow-up on tax issues related to a potential    25 disposition." Do you recall what tax issues</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. What did you call this thing again, this    2 document? The timekeeping system?    3 A. Timekeeping and reporting system, yes.    4 Q. I want you to look --    5 MR. STERN: Do you want to stipulate    6 it's a business record?    7 MR. COFFIN: Sure.    8 Q. (By Mr. Coffin) The entry on August 27th of    9 '99, it says, "Follow-up on tax strategy on    10 intermediary transaction discussed with EY    11 national and follow-up on tax issues related to    12 potential disposition."    13 Now, this entry, I assume, was    14 pursuant or subsequent to your conversation    15 with Mr. Hoffman; is that correct?    16 A. That could have been, correct.    17 When was the Hoffman fax?    18 Q. August 30.    19 A. That was subsequent to our conversation, so    20 it's possible that that was pursuant to that    21 discussion.    22 Q. You spent three hours on it, is that right --    23 A. Yes.    24 Q. -- on that particular date.    25 So I assume this is consistent with</p>	<p style="text-align: right;">Page 45</p> <p>1 those would have been?    2 A. No, not specifically.    3 Q. Then your August 30 of '99 entry, "Tax issue on    4 intermediary," more of the same? Discussion of    5 the intermediary transaction with Mr. Korb    6 would it have been, or what would -- what are    7 you describing in that entry?    8 A. Which line item are you looking at?    9 Q. August 30 of '99.    10 A. There's two entries.    11 Q. I'm sorry, the second one.    12 A. "Tax issue on intermediary"?</p> <p>13 Q. Yes.    14 A. I don't know which -- who I would have been    15 talking to or dealing with on that.    16 Q. Then 8/31/99, "Steve on proposal." I assume    17 that's Steve Korb?    18 A. Yes, I would assume that's the case.    19 Q. What was the proposal?    20 A. I don't know which proposal I'm referring to    21 there.    22 Q. And then "tax issues with proposed transaction    23 and discuss issues with PWC." I assume you    24 would have been talking about the proposed    25 intermediary transaction at that point?</p>

12 (Pages 42 to 45)

HUNDT REPORTING  
 214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 46</p> <p>1        MR. STERN: Objection, form.    2    A. I don't know specifically what the discussion    3        was.    4    Q. (By Mr. Coffin) If you are talking with PWC?    5    A. Yes.    6    Q. Wouldn't that necessarily be who you were    7        talking about, the proposed intermediaries    8        transaction?    9        MR. STERN: Objection, form.    10   A. It might have been, but I can't say for sure.    11   Q. (By Mr. Coffin) Were you working with PWC with    12        regard to any other proposed transaction at    13        that time?    14   A. I don't recall that I was.    15   Q. Turn to the third page, please.    16   A. (Witness complies.)    17   Q. Now, these are entries that Shari A. Fox made.    18        Was she an employee of Ernst &amp; Young?    19   A. She was at the time.    20   Q. It looks like the next two pages or so and the    21        top of the third page is filled with her    22        entries into the timekeeping system; is that    23        correct?    24   A. That's correct.    25   Q. As the senior -- you were senior manager at the</p>	<p style="text-align: right;">Page 48</p> <p>1        related to a Section 355 spinoff at the time?    2    A. It could have been that we -- that we were    3        asked to look at whether or not -- I know there    4        were several subsidiaries of the Bishop Group,    5        and there could have been discussion regarding    6        trying to spin off one of those subsidiaries in    7        a 355 type of transaction.    8    Q. Was it because the buyer wouldn't have    9        wanted -- why would that have been, why would    10        Langley want to spin off subsidiaries in a    11        tax-free transaction?    12   A. I would assume that the buyer wouldn't want the    13        assets of that subsidiary or that subsidiary.    14   Q. At this point, we don't know who the buyer is,    15        so it would be any potential buyer; is that    16        right?    17   A. Correct.    18        Or perhaps the other way around,    19        perhaps those were assets that Langley wanted    20        to retain, I don't know. One of the two.    21   Q. On the bottom right-hand corner there's a DOJ    22        number. DOJ 4401 is what I would like you to    23        turn to, please.    24   A. (Witness complies.)    25   Q. It says "page 16" in the middle; is that</p>
<p style="text-align: right;">Page 47</p> <p>1        time and Ms. Fox was a senior?    2    A. Right.    3    Q. You would have been reviewing her work; is that    4        correct?    5    A. That's correct.    6    Q. Would you have necessarily reviewed her time    7        entries into the timekeeping system?    8    A. Not prior to perhaps reviewing this report.    9    Q. Okay, but once the report was generated, you    10        would review it?    11   A. Right.    12   Q. Go back, make sure everything -- there was --    13        the entries were reasonable; is that right?    14   A. Perhaps.    15   Q. On the entry for -- there's two entries for    16        August 4. I direct you to the second entry,    17        "Research on potential Section 355 spinoff of    18        unwanted assets prior to proposed sale    19        transaction." Could you elaborate on what that    20        issue was at the time?    21   A. I can tell you what a 355 spinoff is. 355    22        spinoff deals with the disposition of -- the    23        disposition of stock of a subsidiary generally    24        in a tax-free transaction.    25   Q. Do you recall the issue or was there an issue</p>	<p style="text-align: right;">Page 49</p> <p>1        correct?    2    A. That's correct.    3    Q. Now, is this a different document or the same    4        document or same type of document?    5    A. Are you asking is that part of our time    6        reporting system?    7    Q. Correct.    8    A. If looks like it comes from our time reporting    9        system, correct.    10   Q. At the top it looks like it says for the days    11        October 1, '99, through 10/31/99; is that    12        right?    13   A. Correct.    14   Q. In middle under Principal it says, "John    15        Edwards Swails." And do you recall what    16        Mr. Swails was doing on the Bishop Group or    17        what was Mr. Swails doing for the Bishop Group?    18   A. Ed is part of our tax quality and standards    19        group.    20   Q. He goes by Ed, John Edward Swails goes by --    21   A. Yes.    22   Q. What was he doing? Why was he conferred with    23        during the --    24   A. It would have been a procedural matter. He    25        deals with policy and procedure, not</p>

13 (Pages 46 to 49)

HUNDT REPORTING  
214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 50</p> <p>1 necessarily technical issues. In fact, never 2 technical issues, really. 3 Q. Is he in New York or Washington, D.C.? 4 A. Ed, I believe, is in Washington. 5 Q. If you look at the entries above that, 6 beginning October 11, '99, under Mr. Swails, it 7 says "Off" -- I assume "Office conference with 8 Elio" -- and that's the partner you mentioned 9 earlier? 10 A. Elio Casinelli. 11 Q. -- "re: Tax opinion." Was Ernst &amp; Young 12 approached about issuing a tax opinion in this 13 transaction? 14 A. Yes, we were. 15 Q. Specifically, what was it that they were asked 16 to issue a tax opinion on? 17 A. I believe that we were asked to provide a tax 18 opinion to Langley with respect to receiving 19 capital gain treatment on the sale of stock. 20 Q. Did it specifically have to do with a capital 21 gain treatment related to or subsequent to an 22 intermediary transaction? 23 MR. STERN: Objection, form. 24 MS. SEABROOK: I think also the 25 Langley -- the Bishop Group has asserted a 7525</p>	<p style="text-align: right;">Page 52</p> <p>1 been -- has Mr. Minaldo been consulted recently 2 in conjunction with this deposition? 3 MS. SEABROOK: I have no idea. There 4 was a taxpayer representative at Bruce's 5 interview, and an attorney. 6 THE WITNESS: John Edgar, I believe, 7 was his name. 8 MS. SEABROOK: John Edgar, yes, that 9 asked to be present in order to assert the 10 privilege at that interview, but he was not 11 permitted to attend. I don't know whether he 12 still represents them or not. 13 MR. COFFIN: I just need to know who 14 to bring to court and who is going to -- if 15 we're successful, who is going to pay the costs 16 of us coming back up here. 17 MS. SEABROOK: Can we go off the 18 record a second? 19 MR. COFFIN: Sure. 20 (Discussion off the record.) 21 Q. (By Mr. Coffin) Mr. Snyder, did you contact 22 Mr. Minaldo or anybody who formerly worked for 23 or represented the Bishop Group about this 24 deposition? 25 A. No, I did not.</p>
<p style="text-align: right;">Page 51</p> <p>1 privilege in connection with any advice 2 provided to them in connection with the sale of 3 this entity. So I think we would have to get 4 them to waive that before Bruce could talk 5 about the details of what type of opinion they 6 requested or what type of advice was given to 7 them. 8 MR. COFFIN: Okay. Like we mentioned 9 earlier, that this is a listed transaction that 10 the government would assert is a tax shelter 11 transaction, therefore the privilege wouldn't 12 apply. If you are going to continue to assert 13 the privilege, that's fine. 14 MS. SEABROOK: I'm not asserting the 15 privilege. This client has asserted the 16 privilege. So the client is the one that needs 17 to prove up the privilege or not. 18 MR. COFFIN: So who am I going to 19 summon to the court to argue this privilege? 20 MS. SEABROOK: I believe the client's 21 attorney was Tina Minaldo, and that they 22 provided a document or documents that have 23 already been provided to the IRS asserting the 24 privilege with respect to the advice. 25 MR. COFFIN: Do we know, has he</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. Did you feel like you had an obligation to do 2 that? 3 A. No, I did not. 4 Q. Why is that? 5 A. Basically, I wasn't instructed to by counsel. 6 MR. COFFIN: If you are going to -- I 7 mean, are you advising the witness to not 8 answer the question? 9 MS. SEABROOK: No. I'm advising him 10 to answer the questions as they deal with 11 factual matters. And going over the time 12 reports is fine, but as far as the subject 13 matter of advice given, we were careful not to 14 go into that at the interview and we would not 15 go into the subject matter or the specific 16 advice that may or may not have been given 17 because there has been a privilege asserted. 18 And that's our concern. And that's what the 19 e-mail from Michael Frank, the general counsel, 20 to you, states, that we cannot -- that the 21 client has asserted 7525 privilege and that 22 there may be areas that we cannot go into. 23 MR. STERN: You've made a distinction 24 between -- are we on the record? 25 MS. SEABROOK: Yes.</p>

14 (Pages 50 to 53)

HUNDT REPORTING  
214-220-1122

Witness: Bruce Snyder

Page 54	Page 56
<p>1       MR. STERN: Subject matter or 2       substance, are you distinguishing between 3       those?</p> <p>4       MS. SEABROOK: Subject matter, are you 5       meaning whether advice was given on an 6       intermediary transaction?</p> <p>7       MR. STERN: Yes. That may shorten 8       this up.</p> <p>9       MS. SEABROOK: That's correct, you are 10       right, it may.</p> <p>11       Bruce, did Ernst &amp; Young give tax 12       advice to the Bishop Group on the subject 13       matter of an intermediary transaction?</p> <p>14       THE WITNESS: No.</p> <p>15       MR. COFFIN: Your question again was 16       did Langley or did Bishop Group ask?</p> <p>17       MS. SEABROOK: I believe he's told you 18       that they asked for an opinion on the issue of 19       capital gains treatment.</p> <p>20       MR. COFFIN: I'm going to ask 21       questions. If you want to assert your 22       privilege --</p> <p>23       MS. SEABROOK: It's not my privilege 24       to assert.</p> <p>25       MR. COFFIN: If the witness does not</p>	<p>1       Q. Next entry, 10/18 of '99, "Review Bruce," it 2       says "Schneider" -- that is supposed to be 3       Snyder?</p> <p>4       A. Correct.</p> <p>5       Q. -- "rep memo." Do you recall what that was?</p> <p>6       A. I believe that we received a representation 7       memo from Fortrend.</p> <p>8       Q. What did that memo --</p> <p>9       A. I don't recall what all the representations 10       were.</p> <p>11       Q. Was that a document -- are you aware if that 12       document was provided to the government or not?</p> <p>13       A. I don't recall.</p> <p>14       Q. Who sent you the memo? It says, "Bruce 15       Schneider rep memo." Did you author the memo?</p> <p>16       A. No, I did not.</p> <p>17       Q. It was sent from Fortrend?</p> <p>18       A. I believe so. Probably Craig Hoffman.</p> <p>19       Q. What kind of memorandum was it, do you recall?</p> <p>20       A. I think they were making certain 21       representations with respect to us being able 22       to provide a tax opinion with respect to them 23       as the buyer. And it was a sample 24       representation document.</p> <p>25       Q. So you used that to -- did you look at that</p>
Page 55	Page 57
<p>1       want to answer, then we'll address that.</p> <p>2       MS. SEABROOK: I'm not sure what we 3       had on the record and what we didn't have on 4       the record because we went off the record.</p> <p>5       I'm not trying to be difficult. This 6       witness is in a difficult position because the 7       former client has asserted a 7525 privilege. 8       And this is not recent, this is two years ago. 9       So we have to be careful not to talk about 10       advice that Bruce, in his capacity as an Ernst 11       &amp; Young partner, may have given to this 12       particular client that's not in connection with 13       the filing of the return but is in connection 14       with other types of tax advice.</p> <p>15       Bruce has clarified that they did not 16       provide tax advice on an intermediary 17       transaction, which is what I think what you are 18       driving for, what you are looking for. And if 19       you're going to ask him about other tax advice 20       provided to the client, I think until we get 21       the client waiver on that, he cannot testify.</p> <p>22       MR. COFFIN: Okay.</p> <p>23       Q. (By Mr. Coffin) Back on page 16 again. There 24       was no tax opinion ever issued; is that right?</p> <p>25       A. That's correct.</p>	<p>1       document and make any kind of assessment of it?</p> <p>2       A. I probably did. And it appears that I also 3       provided that to at least Harvey Berenson.</p> <p>4       Q. So at least somebody had asked Ernst &amp; Young at 5       the time to provide a tax opinion with regard 6       to the intermediary transaction?</p> <p>7       A. That's correct.</p> <p>8       Q. And it was not issued?</p> <p>9       A. Well, again, it was a tax opinion. Let me 10       clarify, it was a tax opinion with respect to 11       capital gains treatment on the sale of stock, 12       that I do remember.</p> <p>13       Q. Was the representation memo from Fortrend 14       retained by Ernest &amp; Young?</p> <p>15       A. I don't believe so.</p> <p>16       Q. So the next entry, for Mr. Berenson, on 10/18 17       of '99, "Review purchase agreement and proposed 18       reps for midco transaction." So you think 19       Mr. Berenson would have been looking at the 20       same proposed rep letter; is that right?</p> <p>21       A. Probably.</p> <p>22       Q. And the midco transaction, was that known in 23       the accounting circles as the same thing as an 24       intermediary transaction?</p> <p>25       MR. STERN: Objection, form.</p>

Witness: Bruce Snyder

<p style="text-align: right;">Page 58</p> <p>1 A. It could have been.      2 Q. (By Mr. Coffin) Could it have been anything      3 else?      4 A. Midco could have referred to Midcoast, I      5 assume, but I don't know that for sure.      6 Q. Why wasn't a tax opinion letter issued by Ernst      7 &amp; Young?      8 A. I don't believe we were comfortable with all      9 the representations.      10 Q. Whose representations?      11 A. Well, it would have been Fortrend.      12 Q. Can you elaborate why you weren't comfortable?      13 A. I don't recall specifically.      14 Q. How about generally?      15 A. I know there was a time element involved, too.      16 Q. What do you mean by that?      17 A. Well, with respect to the time frame that the      18 opinion needed to be issued.      19 Q. It needed to be issued, as far as you knew,      20 before the transaction closed with Fortrend?      21 A. I think that was also an issue.      22 Q. Again, you said you didn't recall specifically      23 why Ernst &amp; Young wasn't comfortable with      24 Fortrend. Do you remember generally why they      25 may not have been comfortable with Fortrend,</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Why was PWC getting a copy of those?      2 A. I would presume that they were doing their own      3 due diligence with respect to the tax basis of      4 the assets.      5 Q. Was that on behalf of Fortrend or Midcoast or      6 do you know?      7 A. I don't recall.      8 Q. Turn the page to page 18 of Government Exhibit      9 225.      10 A. (Witness complies.)      11 Q. There is an entry there by Christopher Nelson.      12 Who is that?      13 A. Do you mind if I refer to the previous      14 document?      15 Q. Sure.      16 A. He would have been -- let's see, US 150. He      17 would have been somebody in national tax.      18 Q. In New York?      19 A. Either New York or Washington, D.C. likely.      20 But we have national tax people throughout the      21 country that are part of that group, so...      22 Q. Did you have a direct discussion with      23 Mr. Nelson?      24 A. It appears that I did by this timekeeping.      25 Q. Mr. McCormack was involved as well, Rob</p>
<p style="text-align: right;">Page 59</p> <p>1 why the firm wasn't comfortable with Fortrend?      2 MR. STERN: Objection, form.      3 A. I don't recall. Typically, we don't issue      4 opinions on transactions that have not closed.      5 Q. (By Mr. Coffin) So the time element was that      6 you didn't want to -- Ernst &amp; Young didn't want      7 to issue a tax opinion for a transaction that      8 was going to close in the future?      9 A. Right.      10 Q. Who requested the tax opinion?      11 A. I believe that it was Steve Korb on behalf of      12 the company, or Dennis for that matter.      13 Q. Turn to page 17, which is DOJ 4402.      14 A. (Witness complies.)      15 Q. There's an entry for October 22 of '99. It      16 says, "Get info together for review by PWC and      17 meet with PWC on basis calculations." I      18 believe we if look back to page 16, these are      19 entries for your time; is that right?      20 A. Yes, I believe you're right.      21 Q. What information was gathered for review by      22 PWC?      23 A. I'm sorry, which line item are you looking at?      24 Q. October 22 entry.      25 A. It looks like tax basis calculations.</p>	<p style="text-align: right;">Page 61</p> <p>1 McCormack?      2 A. Yes, it looks like it.      3 Q. Do you know who Mr. McCormack was?      4 A. I believe he was a partner in national tax as      5 well.      6 Q. So in October 18 of '99, do you recall, would      7 this have been a telephone conference?      8 A. Yes.      9 Q. Do you recall what was discussed in that      10 telephone conference?      11 A. No, not specifically.      12 Q. Turn the page, please.      13 A. (Witness complies.)      14 Q. There are some entries there for Emily Burns.      15 Was that another individual working under you?      16 A. Yes.      17 Q. What was her level?      18 A. She would have been a staff person. She would      19 have been a staff person at the time.      20 Q. So on October 8 of '99, it looks like she      21 "Searched for policies and procedures on tax      22 opinions"?      23 A. Correct.      24 Q. Her next entry is "Researched applicable      25 penalties and exposure to selling stock to an</p>

16 (Pages 58 to 61)

HUNDT REPORTING  
 214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 62</p> <p>1 intermediary versus a sale of assets."</p> <p>2 Was there a concern by the Bishop</p> <p>3 Group that engaging in an intermediary</p> <p>4 transaction would expose it to penalties?</p> <p>5 A. There may have been.</p> <p>6 Q. You don't recall specifically?</p> <p>7 A. I don't recall specifically if they</p> <p>8 researched -- they asked us to research that</p> <p>9 issue or if we did it on our own behalf.</p> <p>10 Q. Why would you have done it on your own behalf?</p> <p>11 A. Just to look into the issue.</p> <p>12 Q. Did you report anything like that to anybody at</p> <p>13 the Bishop Group?</p> <p>14 A. I don't recall. I could have.</p> <p>15 Q. Turn the page, please.</p> <p>16 A. (Witness complies.)</p> <p>17 Q. There is an entry there for a principal, Kyle</p> <p>18 Klein. Who is that?</p> <p>19 A. I'm sorry, which page are you looking at?</p> <p>20 Q. The Bates number should be 4364. Did you find</p> <p>21 that?</p> <p>22 A. Kyle Klein is in our national office.</p> <p>23 Q. Did you have a discussion with Kyle Klein --</p> <p>24 A. It appears that I did.</p> <p>25 Q. -- in June of 2000?</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Did you ever meet with Mr. Teig?</p> <p>2 A. Face-to-face?</p> <p>3 Q. Yes.</p> <p>4 A. No, I don't recall so.</p> <p>5 Q. Did you speak with him on the phone?</p> <p>6 A. Yes, on several occasions.</p> <p>7 Q. We'll go through that.</p> <p>8 A. I think our primary discussions were via</p> <p>9 e-mail.</p> <p>10 Q. Had you talked to Mr. Teig prior to January of</p> <p>11 2000 or was that the first time you dealt with</p> <p>12 him?</p> <p>13 A. I don't recall talking to him prior to that</p> <p>14 time, no.</p> <p>15 MR. COFFIN: Anybody need a break?</p> <p>16 (A lunch recess was taken.)</p> <p>17 Q. (By Mr. Coffin) Mr. Snyder, would you please</p> <p>18 turn again to Government Exhibit 225. And</p> <p>19 specifically, if you will turn to Bates No.</p> <p>20 4402. It says "Page 17," bottom middle.</p> <p>21 A. Okay.</p> <p>22 Q. It's again, if you look at the prior page, this</p> <p>23 looks like your entries; is that right?</p> <p>24 A. Yes.</p> <p>25 Q. Again, those entries are regarding engagement</p>
<p style="text-align: right;">Page 63</p> <p>1 Do you recall what the subject matter</p> <p>2 of that conversation was?</p> <p>3 A. Let's see, Kyle deals in -- primarily in</p> <p>4 taxation of financial instruments. So it would</p> <p>5 have had something to do with looks like maybe</p> <p>6 some type of option type of arrangement or</p> <p>7 something like that was being contemplated at</p> <p>8 the time, some deferred payment.</p> <p>9 Q. Turn on to 4366, please.</p> <p>10 A. (Witness complies.)</p> <p>11 Q. Shari Fox -- entry for Shari Fox as a manager,</p> <p>12 do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. "Discussions with Howard Teig - intermediary</p> <p>15 auditor regarding YE" -- that stands for</p> <p>16 year-end; isn't that right?</p> <p>17 A. That would be correct.</p> <p>18 Q. -- "issues and return prep issues." Was Mr.</p> <p>19 Teig the gentleman from Fortrend that you</p> <p>20 mentioned earlier?</p> <p>21 A. I believe he represented the buyer of the</p> <p>22 stock. And I believe it was a cash merger</p> <p>23 transaction. So I think he would have</p> <p>24 represented K-Pipe or K-Pipe Holdings at the</p> <p>25 time.</p>	<p style="text-align: right;">Page 65</p> <p>1 for tax opinion and tax issues. And my</p> <p>2 colleagues advised me at lunch that there was</p> <p>3 some confusion as to what issue the tax opinion</p> <p>4 was requested for, so I just want to clear it</p> <p>5 up.</p> <p>6 You were requested by the Bishop Group</p> <p>7 to issue a tax opinion on the intermediary</p> <p>8 transaction; is that correct?</p> <p>9 MR. STERN: Objection, form.</p> <p>10 A. I was asked to provide a tax opinion whether or</p> <p>11 not capital gains would be received on a tax --</p> <p>12 on a stock transaction. That was the tax</p> <p>13 opinion that I was asked to deliver.</p> <p>14 Q. (By Mr. Coffin) Now, did that encompass the</p> <p>15 sale to an intermediary, the sale of the stock</p> <p>16 to an intermediary?</p> <p>17 A. I think it would have encompassed the sale of</p> <p>18 the stock to Fortrend, however you would have</p> <p>19 classified them.</p> <p>20 Q. Was it requested that -- some of the facts that</p> <p>21 was proposed to you in issuing the tax opinion,</p> <p>22 did that include a sale to a company who would</p> <p>23 subsequently sell the assets to Midcoast?</p> <p>24 A. I don't recall specifically, but -- no, I don't</p> <p>25 recall specifically.</p>

17 (Pages 62 to 65)

HUNDT REPORTING  
214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 66</p> <p>1 Q. But? What were you going to say? Generally, 2 do you recall something like that? 3 A. Perhaps. Again, we don't issue a tax opinion 4 with respect to a transaction that hasn't 5 closed. 6 Q. Why is that? 7 A. Because you don't have all the facts until the 8 transaction closes. 9 Q. But Fortrend would have been a buyer and the 10 facts were proposed to you in issuing the tax 11 opinion? 12 A. Yes, I believe so. 13 Q. And you said earlier I think that you were -- 14 that E&amp;Y also was not comfortable with 15 Fortrend; is that correct? 16 A. We were not -- we -- I guess we -- I think it 17 was somewhat misrepresented to us that they had 18 actually done deals with Ernst &amp; Young. 19 Q. So how did that affect whether you would issue 20 an opinion or not, or whether Ernst &amp; Young 21 would issue an opinion or not? 22 A. Well, I think the request, as I look through 23 these time records and recall, was whether we 24 would issue an opinion on -- given the 25 representations that were provided, and the</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Did Ernst &amp; Young ask any questions as to what 2 would happen to the gain from the sale of the 3 assets by the intermediary? 4 A. I don't recall that we got that far. 5 Q. Did you ever gain an understanding in this case 6 how Fortrend handled the gain on the 7 transaction? 8 A. With respect to this review of the transaction 9 during this time frame? 10 Q. During the time frame, yes. 11 A. No. 12 Q. You did subsequent to that; is that correct? 13 A. Just in connection with preparation of the 14 income tax returns, which would have been 15 almost a year subsequent to that. 16 Q. As far as your understanding of intermediary 17 transactions at the time, did you understand 18 generally how they worked? 19 A. I don't recall if I had a really good 20 understanding of the transactions. 21 Q. Did you know or did you understand that somehow 22 gain related to the sale of assets would be 23 offset in those types of transactions? 24 A. I don't recall. 25 Q. Did you ever form an opinion as to who PWC was</p>
<p style="text-align: right;">Page 67</p> <p>1 answer was, no, we don't simply issue an 2 opinion generally based on representations. 3 Q. Okay. And those representations again were 4 from Fortrend? 5 A. Yes, I believe so. 6 Q. Ernst &amp; Young, or you specifically, Ernst &amp; 7 Young were uncomfortable with those 8 representations made by Fortrend? 9 A. Perhaps -- I don't recall exactly why we were 10 uncomfortable with those representations. 11 Presumably, we didn't feel like it was enough 12 to be able to say, after the transaction 13 closed, that, yes, we would issue a should 14 opinion or whatever level of opinion we would 15 issue. 16 Q. When you say it was not enough, I still don't 17 understand. What were you looking for? What 18 additional information did you need in order to 19 issue the tax opinion? 20 A. I don't recall specifically. My -- I would 21 think that we would want to make sure we 22 understood what the complete transaction is. 23 Q. And based upon the representations you had -- 24 A. Presumably, we didn't have enough comfort with 25 that.</p>	<p style="text-align: right;">Page 69</p> <p>1 representing as far as was it Fortrend or 2 Midcoast? 3 A. I think it was -- the assumption was it was a 4 buyer. I was authorized by the Bishop Group to 5 talk to them, so not necessarily requiring that 6 I know exactly who they were representing. I 7 think I gave in my previous testimony it was 8 either/or. 9 Q. You never really formed an opinion as to who 10 PWC was representing? 11 A. No, I don't think so. 12 Q. Turn to 4364 again, please. 13 A. Which way is that? 14 Q. Should be going backwards. Should be page 1 at 15 the bottom. It's back to the entry by 16 Kyle Klein. Did you find it? 17 A. Yes. 18 Q. I think you testified earlier that you talked 19 to Mr. Klein; is that correct? 20 A. Ms. But, yes. 21 Q. It's a Ms. Klein? 22 A. Yes. 23 Q. Kyle is a Ms.? 24 A. Yes. 25 Q. She is in the national office?</p>

Witness: Bruce Snyder

<p style="text-align: right;">Page 70</p> <p>1 A. National office, Washington, DC.      2 Q. It says, "Review of plan for sale with options.      3 As currently constructed, this is simply a      4 deferred payment plan and lacks economic      5 substance as a true option." Do you recall      6 that issue arising in your discussions with      7 Ms. Klein?      8 A. That was on June 22 of 2000?      9 Q. Yes.      10 A. I don't specifically recall the issue. I know      11 they were looking at potential contingent      12 payment options and things like that.      13 Q. Did you form an opinion personally that, as      14 constructed, it was something that was simply a      15 deferred payment plan which lacked economic      16 substances as a true option?      17 A. It looks like she must have provided some      18 analysis that that's in case, what it was. I      19 don't know if it was even the final transaction      20 that occurred.      21 Q. Did you use that information in any way?      22 A. I don't recall.      23 Q. It says, "In addition, the B class interest      24 appears to be valued in excess of its real fair      25 market value." Do you know what that is</p>	<p style="text-align: right;">Page 72</p> <p>1 Bishop Group?      2 A. I believe it was -- I don't recall. I believe      3 it was a -- it was an entity within Bishop      4 Group, but I believe it was also an entity that      5 was formed by Dennis Langley at some other      6 point in time, perhaps after that, to do -- I      7 don't think -- I guess what I'm telling you is,      8 in looking at this, I don't think this deal      9 related to the sale of the Bishop Group, I      10 think it was something subsequent that they      11 consulted with us on.      12 Q. Do you recall a payment that was made      13 subsequent to the sale by Midcoast to the      14 Bishop Group or to Langley?      15 A. No, I don't.      16 Q. The \$10 million payment doesn't ring a bell or      17 10.75 million?      18 A. No, I don't believe so.      19 Q. Turn to Exhibit 227, please.      20 A. (Witness complies.)      21 Q. I just wanted to confirm with you this is the      22 billing statement from Ernst &amp; Young to      23 Mr. Langley for services, professional tax      24 services, rendered through October 31 of '99,      25 correct?</p>
<p style="text-align: right;">Page 71</p> <p>1 regarding?      2 A. That may have been something that they had      3 proposed. By they, I mean the Bishop Group.      4 And I don't know even know if they proposed it      5 to anyone. They were just -- that was around      6 June time frame, so they were looking at      7 potential ways to sell the company, I believe.      8 Q. Well, this happened actually in June of 2000.      9 A. Oh, oh, okay.      10 Q. With that in mind--      11 A. Subsequent, okay.      12 Q. Yes.      13       With that in mind, let's go back up to      14 the first question again.      15 A. Okay, I thought it was June of '99.      16 Q. So "sale with options," do you know what that      17 has to do with, "Review of plan for sale with      18 options"?</p>	<p style="text-align: right;">Page 73</p> <p>1 A. That's correct.      2 Q. This would have been a bill that you, as the      3 senior tax manager, would have been responsible      4 for sending to Mr. Langley?      5 A. Yes.      6 Q. Turn to 228, please.      7 A. (Witness complies.)      8 Q. This is an e-mail, looks like a couple of      9 e-mails, but the original e-mail is from      10 Mr. Hoffman, Craig Hoffman, to you; is that      11 correct?      12 A. Yes, it appears so.      13 Q. Dated March 21 of 2000?      14 A. Okay.      15 Q. Mr. Hoffman makes a representation to you that      16 generally -- on behalf of K-Pipe, generally      17 saying there has been no revenue activities; is      18 that correct?      19 A. That's right.      20 Q. Do you recall why this representation was      21 necessary to get from Mr. Hoffman?      22 A. Let's see, that would have been around March of      23 2000. So we would have been probably looking      24 at filing extensions for the 12/31/99 tax year.      25 So that would have been to determine whether or</p>

Witness: Bruce Snyder

<p style="text-align: right;">Page 74</p> <p>1 not we had all the items of income and    2 deductions during that time so we could see if    3 we had enough federal income tax paid in,    4 probably state income tax as well.    5 Q. Did you review on this representation in    6 preparing the 1999 return for K-Pipe, for the    7 K-Pipe group?    8 A. I'm sorry, I didn't understand the question.    9 Q. Did you review on this representation at all in    10 preparing the tax return for the K-Pipe group    11 for 1999?    12 A. I would have -- we probably would have taken    13 this into account in preparing the extensions.    14 Q. Just the extensions?    15 A. Yes. I believe there was some further dialogue    16 with Howard Teig regarding all the activities    17 of the K-Pipe group in preparation of the tax    18 returns subsequent to this e-mail.    19 Q. All right, turn the page to Government Exhibit    20 229, please.    21 A. (Witness complies.)    22 Q. This is a series of e-mails. Looks like the    23 top one is from you to Mr. Palmisano of PWC?    24 A. Uh-huh, yes.    25 Q. With a cc to Shari Fox; is that right?</p>	<p style="text-align: right;">Page 76</p> <p>1 according to this.    2 Q. What is a protective election?    3 A. I believe, under 754, once a partnership makes    4 an election for 754 to apply, the election is    5 irrevocable. But I think you can make an    6 election again upon a subsequent sale of a    7 partnership interest if you are not aware that    8 a 754 election has been made prior to. And I    9 believe that's what we're referring to here    10 with respect to a protective election.    11 Q. Did that have anything to do with the    12 preparation of the K-Pipe 1999 tax return?    13 A. No, that would have been for the seller -- or    14 for the purchaser of the partnership interests.    15 Q. Turn to Government Exhibit 230, please.    16 A. (Witness complies.)    17 Q. Describe this document for me, please.    18 A. That is an engagement letter to -- for    19 preparation of the 1999 income tax returns.    20 Q. For the various entities listed?    21 A. Correct.    22 Q. It's prepared -- it's dated June 5 of 2000?    23 A. Right.    24 Q. And signed by Larry Austin on behalf of K-Pipe    25 Group on June 28 of 2000?</p>
<p style="text-align: right;">Page 75</p> <p>1 A. Yes.    2 Q. Who is Gayla E. Jackson? That's another    3 recipient.    4 A. She was another staff person.    5 Q. And the subject is KPC 754 election; isn't that    6 right?    7 A. Correct.    8 Q. And then below that it looks like there is an    9 e-mail from Jeff Weiner, is that right, to    10 Tom Palmisano, and you have been cc'd; is that    11 correct?    12 A. Correct.    13 Q. What is a 754 election?    14 A. A 754 election is part of the partnership    15 rules, and it's basically to elect to step up    16 the basis with respect to a purchasing partner    17 of an interest in a partnership.    18 Q. Why was Ernst &amp; Young asking for it?    19 A. I don't believe we were asking for it. I    20 believe someone inquired as to whether or not    21 we had seen a signed copy of the election.    22 Q. Had you at that point?    23 A. I don't believe so.    24 Q. Did you ever see one?    25 A. I don't know if we did or not. Apparently not,</p>	<p style="text-align: right;">Page 77</p> <p>1 A. Right.    2 Q. Would you have sent this letter to Mr. Austin    3 for his signature?    4 A. Yes.    5 Q. How was Ernst &amp; Young engaged to prepare these    6 returns? Who requested that?    7 A. I believe that we were requested by the old    8 Bishop Group -- or I believe there was    9 something in the stock purchase agreement with    10 respect to our preparing the final return that    11 included the Bishop Group.    12 Q. Did somebody ask you, or anybody at Ernst &amp;    13 Young, if you would agree to preparing the    14 return, the final return, of the Bishop Group    15 before the sale actually closed? Did somebody    16 ask you that before the sale actually closed?    17 A. I'm sure they did.    18 Q. And it would have been you that would have made    19 the decision to agree to it?    20 A. Yes.    21 Q. Why was somebody at the Bishop Group asking    22 Ernst &amp; Young to prepare the final return?    23 A. If I recall, the reason being is that the    24 activity of the Bishop Group was included    25 through the date of close of the transaction,</p>

Witness: Bruce Snyder

<p style="text-align: right;">Page 78</p> <p>1 which would have included the old shareholder    2 group, which was most of the tax year. And    3 since we had prepared all the prior years'    4 returns, they requested that we prepare this    5 final return for the Bishop Group.</p> <p>6 Q. Who requested that?</p> <p>7 A. It would have been somebody probably at the    8 Bishop Group, such as Steve Korb or perhaps    9 even Langley.</p> <p>10 Q. Who did you discuss this with?</p> <p>11 A. The engagement letter?</p> <p>12 Q. Well, the preparation of the returns would have    13 been Korb or Langley?</p> <p>14 A. By the time this engagement letter was    15 signed -- initially, it would have been    16 probably Korb or Langley.</p> <p>17 Q. Back prior to the close of the transaction?</p> <p>18 A. Back prior to the close of the transaction.    19 And there may have been some communication with    20 either Steve Korb -- probably Steve Korb, or    21 maybe even Minaldo, with respect to us getting    22 in contact with the buyer and getting the    23 information to prepare the returns.    24 And then I believe a lot of the books    25 and records for the year were still housed at</p>	<p style="text-align: right;">Page 80</p> <p>1 ask E&amp;Y to prepare the returns specifically to    2 insure that the sale of assets was properly    3 reported on the tax return -- sale of    4 partnership interest, I'm sorry, was reported    5 on the tax return?</p> <p>6 A. I don't know.</p> <p>7 Q. Government Exhibit 230, is that a standard    8 engagement letter or was it modified at all?</p> <p>9 A. It looks to be fairly standard. I don't recall    10 if there were any modifications or not.</p> <p>11 Q. 231, Government Exhibit 231, please. It looks    12 like a series of e-mails between Shari Fox and    13 Tom Palmisano; is that correct? And it looks    14 like you were cc'd on one of them or two of    15 them; is that right?</p> <p>16 A. It appears to be correspondence between the    17 two, correct.</p> <p>18 Q. I want to focus on the one in the middle from    19 Mr. Palmisano to Shari Fox, cc-ing you on 6/26,    20 2000.</p> <p>21 A. Okay.</p> <p>22 Q. It says, "FYI, K-Pipe Group, Inc., formed a    23 partnership (Butcher Interest Partnership) with    24 Mid-Louisiana Gas Company (a Midcoast sub) as    25 of 11/8/99. As part of the formation, K-Pipe</p>
<p style="text-align: right;">Page 79</p> <p>1 the operating company, which would have been in    2 Kansas. And I believe Jeff Weiner was still on    3 staff then as well, so we worked with him as    4 well to get these prepared.</p> <p>5 Q. Did Mr. Langley request -- do you recall if    6 Mr. Langley requested that E&amp;Y prepare the    7 returns to insure that he would get his capital    8 gains treatment on the sale of the stock?</p> <p>9 A. We would not have reflected his capital gain in    10 the tax return preparation. That would have    11 been reflected on his individual return. So,    12 no. And I don't believe he called specifically    13 and requested us to prepare the returns, it was    14 probably either through Steve Korb or    15 Tina Minaldo.</p> <p>16 Q. Did Langley, Minaldo or Korb request that E&amp;Y    17 prepare the returns to insure that the sale of    18 the assets by K-Pipe to Midcoast would be    19 properly reflected as a sale of assets in the    20 tax return?</p> <p>21 A. I don't know if that was their intention.    22 There was no sale of assets, it was a sale of    23 partnership interests that was reflected on the    24 tax returns.</p> <p>25 Q. What about that, did they ask you -- did they</p>	<p style="text-align: right;">Page 81</p> <p>1 contributed the Butcher Interest for a capital    2 account value of 6.5 million, then received a    3 cash distribution from the partnership the    4 6.225 million. Therefore, the net contribution    5 is \$275,000. This transaction will be treated    6 as a Section 707 disguised sale. Therefore,    7 K-Pipe will have sales proceeds of 6.225    8 million, which should be reflected on the 1999    9 form 1120. The partnership will receive a    10 corresponding step-up in the asset."</p> <p>11 What is a Section 707 disguised sale?</p> <p>12 A. It generally refers to -- that's an Internal    13 Revenue Code section, and it refers to a    14 transaction where a contribution is made of    15 assets to a partnership. Generally those    16 assets have gain inherent. And then a cash    17 distribution is received fairly soon after the    18 contribution. It's considered to be a    19 disguised sale because I think under the rules,    20 in essence, what you are doing is you are    21 selling the assets for cash.</p> <p>22 Q. Then whose return did this affect, whose tax    23 return?</p> <p>24 A. It looks like it would have reflected the    25 K-Pipe consolidated return.</p>

Witness: Bruce Snyder

<p style="text-align: right;">Page 82</p> <p>1 Q. The return that E&amp;Y was preparing?    2 A. That we would have filed, yes.    3 Q. I guess back in 6/26 of 2000 you would have    4 been working on that?    5 A. Correct.    6 Q. Do you know if it was treated as such on the    7 return?    8 A. I don't recall for sure.    9 Q. Then why was Mr. Palmisano telling you how to    10 treat it, telling Ernst &amp; Young how to treat a    11 transaction on the return?    12 MR. STERN: Objection, form.    13 A. I would assume that he must have been involved    14 in advising -- perhaps advising K-Pipe or    15 Midcoast on the transaction.    16 Q. (By Mr. Coffin) Do you know if Ernst &amp; Young    17 did anything to verify the assertions made by    18 Mr. Palmisano here?    19 A. I don't believe we did, no.    20 Q. Was there much correspondence with PWC as far    21 as getting information to prepare the K-Pipe    22 1999 return?    23 A. No, most of the discussion was with Howard Teig    24 or Teig.    25 Q. Mr. Teig, again, represented K-Pipe?</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Was this information requested from Mr. Teig?    2 I guess it would be. First line is "In    3 response to your request for information."    4 A. Right, we requested information regarding the    5 activities of K-Pipe for I guess the period    6 from the time of the transaction through    7 December '99, so that we could understand and    8 properly reflect the information on the tax    9 return.    10 Q. Did you rely on the information?    11 A. We would have relied on that information.    12 Q. In preparing the tax return?    13 A. In preparing the tax return, correct. And any    14 subsequent information we received.    15 Q. At the bottom of the first page of that    16 memorandum it shows that "SCALP's aggregated    17 tax basis in the assets was 145,411,651,    18 consisting of" -- and it shows three items    19 there, Petro, Universal and Canadian dollars.    20 Do you see that?    21 A. Yes.    22 Q. Do you recall how these assets had such high    23 tax basis?    24 A. I believe that we requested representation    25 regarding the tax basis, not from Mr. Teig, but</p>
<p style="text-align: right;">Page 83</p> <p>1 A. He was a -- it was our understanding that he    2 was a CPA that represented K-Pipe.    3 Q. Go to Government Exhibit 233, please.    4 A. (Witness complies.)    5 Q. This is a memorandum from Mr. Teig to Bill Lacy    6 and Shari Fox, correct?    7 A. Correct.    8 Q. Dated August 22, 2000; is that right?    9 A. Correct.    10 Q. Who is Mr. Lacy?    11 A. He was a compliance person, I believe either a    12 senior or a manager. I think he was a manager    13 at the time.    14 Q. He was reporting directly to you?    15 A. He was reporting to me. And he was responsible    16 for preparation of the returns.    17 Q. This is a memo regarding K-Pipe activity; is    18 that right?    19 A. I believe that's right.    20 Q. Did you look at this document in preparation of    21 your deposition today?    22 A. No, I haven't looked at this document in some    23 time.    24 Q. Do you recall seeing this document before?    25 A. Yes.</p>	<p style="text-align: right;">Page 85</p> <p>1 from Mr. Austin.    2 I believe that we also checked into    3 the Canadian dollar transaction specifically as    4 to why it had such high tax basis.    5 Q. What about the Petro and the Universal?    6 A. I don't believe we -- I believe we specifically    7 asked for representation from the president of    8 the company with respect to the tax basis of    9 those two interests, but not -- it's not our    10 responsibility necessarily to perform due    11 diligence and audit those numbers as tax    12 preparers.    13 Q. Did you check -- look into the reasonableness    14 of those numbers? Do you have an obligation,    15 as a tax return preparer, to look into the    16 reasonableness of numbers on the tax return?    17 A. We do, but these are -- these, I believe, were    18 business interests, and so the tax basis has to    19 be representation from the client.    20 I know when I looked at it, I was    21 concerned about the Canadian dollars and that    22 basis. But it was described to me that that    23 was a result of a technical termination of a    24 partnership back in 1996, I believe, at which    25 time that made sense, because that was a</p>

Witness: Bruce Snyder

<p style="text-align: right;">Page 86</p> <p>1 transaction that could create a large basis in 2 property. 3 Q. Turn the page. 4 A. (Witness complies.) 5 Q. At the top of the next page it describes the 6 journal entry to report this transaction. It 7 shows the journal entry made. It says, "The 8 above entry was based upon the fair market 9 value of the contributed assets." So the fair 10 market value would have necessarily been 11 772,861 as asserted by Mr. Teig in this memo, 12 correct? 13 A. Yes. 14 Q. So you have a fair market value of 772,000 and 15 a corresponding tax basis of 145 million and 16 some change. Did that make sense to you at the 17 time, was that reasonable? 18 A. Again, my responsibility is to get 19 representation. I mean, there's many 20 circumstances that created the tax basis 21 substantially in excess of the fair market 22 value of assets. And that could be a very 23 valid tax basis. 24 Again, we did ask about the Canadian 25 dollars, because that seemed fairly odd to us,</p>	<p style="text-align: right;">Page 88</p> <p>1 Section 351 under the Internal Revenue Code," 2 do you see that? 3 A. Yes. 4 Q. Did anybody tell you what the business purpose 5 of the Section 351 transaction was? 6 A. I don't believe so. 7 Is a business purpose required under 8 Section 351? 9 Q. I think so. But I'm just asking, did anybody 10 tell you the business purpose -- 11 A. I don't recall documenting a business purpose. 12 Q. Then on the second page it talks about 13 Disposition of Assets. It says, "During 1999, 14 K-Pipe sold the assets that it had received in 15 the contribution from SCALP. The information 16 on the assets sold is as follows," it gives 17 some information there. 18 Did you rely on those representations 19 in preparing the K-Pipe tax return for 1999? 20 A. Yes. 21 Q. Did anybody at K-Pipe tell you what the 22 business purpose of those dispositions were? 23 A. I don't believe so. I think we -- we asked for 24 representation as to whether or not those 25 transactions were with a related party.</p>
<p style="text-align: right;">Page 87</p> <p>1 but that was described as a partnership 2 termination transaction. 3 Q. So the tax basis in this case was essentially 4 187 times the fair market value. And did that 5 not necessarily seem odd to you at all? 6 A. Again, I asked about the Canadian dollars 7 transaction. 8 Q. So it wasn't odd to you at all? 9 A. Not necessarily. 10 Q. Have you seen transactions like that before? 11 A. Where the basis was substantially in excess of 12 the value? 13 Q. Yeah, by 187 times. 14 A. Certainly, you see investments that -- you see 15 investments that are worthless where the tax 16 basis is fairly high, it's fairly standard. 17 Q. In the hundreds of millions? 18 A. Sure. 19 Q. What kind of transactions are those? 20 A. Foreign subsidiary transactions where the 21 subsidiary is worthless and worthless stock 22 production situations. 23 Q. Back on previous page, the paragraph that 24 starts "On November 8, 1999, SCALP contributed 25 pursuant to a plan which would qualify under</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. Which transactions? 2 A. The sale transactions. 3 Q. Did you -- 4 A. The response was, no, they were not with a 5 related party. 6 Q. That's to JRCR Corp? 7 A. Right. 8 Q. And Riversea Corp? 9 A. I believe so. 10 Q. Why was that important to you that they would 11 not be related party transactions? 12 A. Because losses -- loss transactions to related 13 parties are disallowed under the code. 14 Q. Were you aware at the time that basis in assets 15 could be inflated by using abusive tax 16 shelters? 17 A. I knew there was a strategy to inflate the 18 basis of assets vis-a-vis a partnership 19 structure. I don't know at that time whether 20 or not it had been designated or not. 21 Q. Did you look into whether the basis of these 22 assets were inflated by using those types of 23 strategies? 24 A. Not specifically, no. 25 Q. Did you feel an obligation to look into that?</p>

23 (Pages 86 to 89)

HUNDT REPORTING  
214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 90</p> <p>1 A. No, I don't think so. Like I said, I was 2 filing a tax return and just needed to use a 3 reasonable and standard and get representations 4 from the client. 5 Q. On the third page of that document, it lists 6 the cash activities. I assume that's the cash 7 activities of K-Pipe. Is that right? 8 A. Where are you looking? 9 Q. The third page of that document. 10 A. This one, 3 of 7? 11 Q. Next page. Bates No. DOJ 4148. 12 A. Okay. 13 Q. I assume that's the cash activities of K-Pipe 14 and K-Pipe Merger; is that right? 15 A. It looks like that, correct. 16 Q. Once again, these entries were used to assist 17 you in preparing the -- to assist E&amp;Y in 18 preparing the 1999 return? 19 A. Right. 20 Q. Do you know what the entry at the bottom of 21 that page reflects? It just says, "to record 22 sundry cash." 23 A. It looks like it was a distribution and some 24 fees. 25 Q. Did you look into who the recipients of those</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. It's not signed, but it has your signature 2 block there; is that right? 3 A. Correct. 4 Q. Eventually, you signed it and faxed it to 5 Mr. Teig, do you think? 6 A. The intent was to sign it. I don't know if it 7 got signed or not. 8 Q. Was a request made to Mr. Teig on August 28, 9 2000, for additional information? 10 A. Yeah, I think that's what you're looking at 11 here. 12 Q. Why was this letter mailed -- I'm sorry, 13 faxed? 14 A. Faxed? 15 Q. Yes. 16 A. I believe we were looking for additional 17 clarification on certain questions that we had. 18 Q. Did you feel that K-Pipe and Mr. Teig were 19 being forthcoming with the information that 20 they were giving you? 21 A. I think you'll see in the correspondence that 22 there was a lot of back-and-forth between us 23 and Mr. Teig, and we quite honestly were pushed 24 right to the deadline of trying to get these 25 returns filed.</p>
<p style="text-align: right;">Page 91</p> <p>1 fees were for any reason? 2 A. No, I did not. We may have asked the question 3 as to whether or not they believed those fees 4 to be deductible. 5 Q. Did you inquire what the finder's fee was? 6 A. No. 7 Q. Did you have any idea what the finder's fee 8 would have been, who that was paid to? 9 A. No, I don't. 10 Q. Did you ever hear what PWC, what their fee was 11 in this intermediary transaction? 12 MR. STERN: Objection, form. 13 A. I don't know what PWC was paid or who paid 14 them. 15 Q. (By Mr. Coffin) Did E&amp;Y prepare any 1099's for 16 any recipients of these fees? 17 A. No. 18 Q. Go to 234, please. Government Exhibit 234. 19 A. (Witness complies.) 20 Q. Look over the letter and just tell me generally 21 why this letter was mailed to Mr. Teig. 22 I'll back up I guess. Let me ask you 23 if this letter was mailed to Mr. Teig on August 24 28 of 2000. 25 A. I believe it was faxed to Mr. Teig.</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. So are you saying that they were not providing 2 information -- were not timely providing 3 information to you? 4 A. I think that's correct. 5 Q. What about the subject matter of their 6 information, were you comfortable with what you 7 were getting from Mr. Teig and K-Pipe? 8 A. I think we were comfortable enough at the -- in 9 the end to file a tax return. 10 Q. Item No. 5 requested in that letter, why was it 11 important to determine the holding period? 12 A. Well, I think for reporting purposes you need 13 to determine whether or not the gain is 14 long-term or short-term. 15 Q. Item No. -- go ahead. Were you finished? 16 A. Yes. 17 Q. Item No. 7, is that where you requested a 18 representation that neither JRCR Corp. nor 19 Riversea Corp. were related parties? 20 A. Yes. 21 Q. I don't remember if I asked you, but did you do 22 any further due diligence into whether those 23 entries were related parties or not? 24 A. No, other than the representation, which I did 25 receive I believe.</p>

24 (Pages 90 to 93)

HUNDT REPORTING  
214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 94</p> <p>1 Q. On the bottom of this letter, it says, "Copy to 2 Mr. Steve Korb and Ms. Tina Minaldo." Why were 3 they being cc'd on this request? 4 A. I believe under the agreement with K-Pipe they 5 had a right to receive correspondence and 6 information with respect to the final tax 7 return. 8 Q. Do you know why that representation was -- why 9 that agreement was made with them? 10 A. I would assume because there was a straddle 11 period involved with respect to preparation of 12 the income tax return. 13 Q. What was the straddle period? 14 A. Well, the straddle period is one with old 15 ownership versus new ownership of the company. 16 Q. Was the Bishop Group, Limited, was that a 17 corporation or limited partnership? 18 A. Yes, corporation. 19 Q. It was a C corp I guess? 20 A. That's correct. 21 Q. So Mr. Langley owned all the stock of the 22 Bishop Group? 23 A. That's correct. 24 Q. So how would the straddle period or whatever 25 occurred within the corporation affect what was</p>	<p style="text-align: right;">Page 96</p> <p>1 A. That doesn't make sense to me. 2 Q. But I would guess -- it says, "Following is in 3 response to your letter of August 28, 2000." 4 So he didn't respond as late as December 5, 5 2003, did he, to your request? 6 A. No, I believe he responded probably sometime 7 just prior to filing of the tax returns. 8 Q. So I assume it would have been August 30 of 9 2000, which is consistent with the date of the 10 e-mail? 11 A. Or later perhaps. 12 Q. Did you rely on Mr. Teig's responses to your 13 requests in preparing the 1999 tax return for 14 K-Pipe? 15 A. I did rely on those responses, or we did, and 16 also the representations provided by 17 Mr. Austin. 18 Q. Then it looks like Government Exhibit 236 is 19 another follow-up request for information in 20 the form of an e-mail from Mr. Lacy to 21 Mr. Teig, dated September 1 of 2000; is that 22 correct? 23 A. Yes. 24 Q. Mr. Lacy says in his e-mail, in the second 25 paragraph it says, "Also attached is an Excel</p>
<p style="text-align: right;">Page 95</p> <p>1 going on with Mr. Langley, who had just sold 2 the stock in the corporation? 3 A. There may have been -- I don't recall whether 4 there was any sort of tax sharing arrangement 5 with respect to the purchase price of the stock 6 or anything of that matter. Typically, you'll 7 see a sharing arrangement pre and post 8 transaction that has provisions that if it's 9 not within a certain amount, there may be an 10 adjustment to purchase price of the stock. 11 Q. Turn to 235, please. 12 A. (Witness complies.) 13 Q. This is an e-mail from Mr. Teig to Mr. Lacy and 14 Ms. Fox, correct? 15 A. Correct. 16 Q. In the first line he says, "Please copy Bruce 17 Snyder on the e-mail." It looks like this is 18 his response, Mr. Teig's response, to that 19 previous exhibit of August 28, 2000. Is that 20 right? 21 A. Yes, I believe so, but I'm wondering about the 22 date. 23 Q. I think the date may have been more when 24 this -- this document was printed out after the 25 fact.</p>	<p style="text-align: right;">Page 97</p> <p>1 file with financial statements we have 2 constructed from the information in your memos. 3 Please review these financial statements and 4 confirm to us they are accurate." 5 Why -- if you are preparing the tax 6 return, why do you prepare financial 7 statements? 8 A. I think in the previous correspondence all he 9 provided us was journal entries. So we would 10 have to take the balances as of presumably the 11 transaction date and then roll those forward 12 with respect to the journal entries so that we 13 could develop financial statements, because the 14 tax return has really an income statement and a 15 balance sheet. And so you have to present a 16 balance sheet and income statement on the tax 17 return. 18 Q. It looks like, along with the e-mail, there's 19 an attachment there, another memorandum to 20 Mr. Teig from Bruce Snyder, Shari Fox, Bill 21 Lacy, dated September 1 of 2000; is that right? 22 A. Correct. 23 Q. In the first request you are looking for a 24 signed form 8594. What is that form? 25 A. I believe that is a form that reports an asset</p>

25 (Pages 94 to 97)

HUNDT REPORTING  
214-220-1122

Witness: Bruce Snyder

Page 98	Page 100
<p>1 sale.</p> <p>2 Q. Did Ernst &amp; Young ever receive that completed</p> <p>3 form 8594?</p> <p>4 A. I don't recall if we did or not.</p> <p>5 Q. For what purpose would Ernst &amp; Young use it in</p> <p>6 the preparation of K-Pipe's 1999 tax return?</p> <p>7 A. I believe that it's required to be attached to</p> <p>8 the tax return by both the buyer and seller of</p> <p>9 assets. I think we later determined that it</p> <p>10 was actually a sale of partnership interests</p> <p>11 and not a sale of assets. So perhaps we</p> <p>12 determined that that form isn't actually</p> <p>13 required, I just can't recall.</p> <p>14 Q. Had it been required, would you have prepared</p> <p>15 it and attached it with the tax return?</p> <p>16 A. We would have requested a copy of it, either</p> <p>17 prepared, or we would have prepared the form</p> <p>18 ourselves.</p> <p>19 Q. Then item No. 2 in that memo says, "With regard</p> <p>20 to item 11 of your memo of August 30 of 2000,</p> <p>21 we still have some confusion about how SCALP</p> <p>22 could have a tax basis of \$40,288,712 in the</p> <p>23 Canadian currency." So that's what you</p> <p>24 expressed earlier, your continuing concern</p> <p>25 regarding the tax basis in the currency?</p>	<p>1 in connection with the summons, not the</p> <p>2 original tax return work papers. So that looks</p> <p>3 like an income statement that we developed from</p> <p>4 his journal entries from 11/9 -- 11/8 of '99</p> <p>5 through 12/31 of '99.</p> <p>6 Q. Is that a tax loss there or a book loss that's</p> <p>7 shown?</p> <p>8 A. That looks like a book loss.</p> <p>9 Q. Prepared -- so book would be prepared under</p> <p>10 Generally Accepted Accounting Principles?</p> <p>11 A. Likely. It looks like they recorded the assets</p> <p>12 that they contributed at fair market value as</p> <p>13 opposed to tax basis. So the loss would not be</p> <p>14 reflected in the book net income. I don't know</p> <p>15 if that's proper GAAP treatment or not.</p> <p>16 Q. But anyway, it's a book basis?</p> <p>17 A. Right.</p> <p>18 Q. "Gain/loss on the sale of assets" on Government</p> <p>19 Exhibit 226, it shows \$2.9 million, then it</p> <p>20 says "plug." What does that mean?</p> <p>21 A. I think that was -- that's derived to get to</p> <p>22 the correct net income or loss number, I</p> <p>23 believe, based on the cash that was received.</p> <p>24 Q. Just to clarify, would you agree with me then</p> <p>25 that 226 belongs on the back end of 236 as far</p>
Page 99	Page 101
<p>1 A. Correct.</p> <p>2 Q. I assume you obtained information later to --</p> <p>3 A. We did obtain information. As I recall, on the</p> <p>4 original documentation there was a subsequent</p> <p>5 e-mail from Howard Teig.</p> <p>6 Q. We may get to it here.</p> <p>7 A. Okay.</p> <p>8 Q. Then attached to that are the financial</p> <p>9 statements that Mr. Lacy prepared, is that</p> <p>10 correct, would have prepared? It looks like</p> <p>11 there's a Changes in Cash schedule, then a</p> <p>12 Balance Sheet?</p> <p>13 A. Yes, that could have been.</p> <p>14 Q. Then a Balance Sheet.</p> <p>15 And then I have mistakenly tagged up</p> <p>16 Government Exhibit 226, looks like the final</p> <p>17 financial statement that should go along with</p> <p>18 the other two; is that right?</p> <p>19 A. 226?</p> <p>20 Q. You don't have it?</p> <p>21 A. I went to 237.</p> <p>22 Q. If you go back to 226, I think it's probably</p> <p>23 out of order. It says "5 of 5" on the bottom</p> <p>24 right and I don't know who wrote that, but --</p> <p>25 A. That's probably my writing. I think that was</p>	<p>1 as the order of the exhibits?</p> <p>2 A. I believe that's correct.</p> <p>3 Q. Then turn to 237.</p> <p>4 A. (Witness complies.)</p> <p>5 Q. It looks like another e-mail from Mr. Teig to</p> <p>6 Mr. Lacy, Ms. Fox and to you, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Dated December 1 of 2000. He says he's never</p> <p>9 seen the 8594 and was thinking that you had it</p> <p>10 or could inquire about such. I think we</p> <p>11 discussed that a minute ago.</p> <p>12 Regarding SCALP's basis in the</p> <p>13 currency, Mr. Teig says, "The transactions that</p> <p>14 caused SCALP to have the basis are quite</p> <p>15 complex and would therefore be quite difficult</p> <p>16 to convey." Do you see that there?</p> <p>17 A. Yes.</p> <p>18 Q. How did perceive Mr. Teig's response in that</p> <p>19 regard?</p> <p>20 A. I don't believe we considered that to be</p> <p>21 sufficient. I think we inquired with respect</p> <p>22 to more information.</p> <p>23 I thought there was a subsequent</p> <p>24 e-mail to that. Maybe we're coming to it or</p> <p>25 maybe there was a discussion.</p>

26 (Pages 98 to 101)

HUNDT REPORTING  
214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 102</p> <p>1 Q. Go to 232.    2 A. (Witness complies.)    3 Q. This is a series of e-mails between --    4 A. I'm sorry, 232?    5 Q. Yes.    6 A. I go from 237, which I think the one we were    7 just on --    8 Q. Then go back to 232, I think. They're probably    9 in order. Like I said, I tried to put these in    10 chronological order, but I might have missed    11 some of them. Go backwards.    12 A. Okay.    13 Q. This appears to be another series of e-mails    14 from -- or between Ernst &amp; Young and Mr. Teig,    15 is that correct, it looks like sent around    16 September of 2000?    17 A. Okay.    18 Q. Did Ernst &amp; Young rely on these responses by    19 Mr. Teig to these requests in preparing the    20 1999 tax return for K-Pipe?    21 A. Without reviewing all the responses, I couldn't    22 say whether we specifically relied on    23 everything in here, but I'm sure that we did in    24 connection with other responses.    25 Q. Item No. 5 on 3 of 3 talks about an unpaid</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Then item No. 2, SCALP Basis Issues, it says,    2 "At this time we have yet to receive a    3 sufficient amount of information regarding this    4 transaction."    5 Did E&amp;Y have any concerns at that time    6 about the transaction, about the --    7 A. I think we had concerns that we weren't getting    8 the necessary explanation and that's why we    9 asked for additional information. And I think    10 Shari's e-mail here is well-articulated.    11 Q. Expressing a little bit of frustration maybe?    12 A. Correct.    13 Q. "It is our responsibility as the paid tax    14 preparer to insure that this transaction will    15 meet the substantial authority test if    16 questioned in the future by the Internal    17 Revenue Service." What is the substantial    18 authority test?    19 A. Well, I think she's -- I don't know if the --    20 if the standard is substantial authority with    21 respect to tax return preparation. I think    22 it's -- I think it probably is substantial    23 authority.    24 But basically, we have to have return    25 filing positions with respect to transactions,</p>
<p style="text-align: right;">Page 103</p> <p>1 invoice. Did K-Pipe pay all of E&amp;Y's fees in    2 connection with the preparation of the '99    3 return?    4 A. Yes.    5 Q. They eventually did pay up?    6 A. Yes.    7 Q. If you look at 2 of 3 in the requests from    8 Ms. Fox to Mr. Teig -- or actually to    9 Mr. Austin, I guess, and Mr. Teig, item No. 1    10 talks about "With respect to the asset purchase    11 price allocation issues, Section 2.9 of the    12 asset purchase agreement addresses this issue.    13 It states that 'within 60 days from closing the    14 buyers will provide to the seller a schedule of    15 the buyer's estimated allocation of the    16 purchase price among the assets required.' We    17 do not have access to that information and it    18 appears that the buyer should have provided    19 this to K-Pipe the first part of the year."    20 Why was the asset purchase price    21 allocation needed to prepare the return?    22 A. I believe it's just a reported -- a reporting    23 matter.    24 Q. Did E&amp;Y eventually get that information?    25 A. Again, I don't know for sure.</p>	<p style="text-align: right;">Page 105</p> <p>1 so that's what we were requesting here.    2 Q. Say that again, you had to have what?    3 A. Return filing positions that were acceptable    4 under the substantial authority standard with    5 respect to any items reflected on the income    6 tax return.    7 Q. Did you feel like you had?    8 A. By the end, I know that we did, based on the    9 representations and the final description of    10 the -- I believe it was the foreign currency    11 transaction. Again, the standard for tax    12 return preparation isn't extremely high, it's    13 less than 50 percent likelihood of success.    14 Q. Government Exhibit 239, please. This is an    15 e-mail from Mr. Lacy to Mr. Teig, correct,    16 dated 9/7, 2000; is that right?    17 A. Yes.    18 Q. Subject K-Pipe issues. Mr. Lacy says that "The    19 financial statements we put together are    20 constructed on a book rather than a tax basis.    21 Based on your comment about the loan fee, I    22 have revised these financial statements to    23 reflect the \$750,000 loan fee as having first    24 been capitalized and then written off against    25 income in the same year, when the loan was</p>

27 (Pages 102 to 105)

HUNDT REPORTING  
 214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 106</p> <p>1 repaid. Thus, there is an additional charge of 2 \$750,000 on the income statement."</p> <p>3 So if you turn to the income 4 statement -- which is 4 of 4; is that right?</p> <p>5 A. (No response.)</p> <p>6 Q. So from the period of November 8th of '99 7 through December 31 of '99, K-Pipe Group had a 8 net -- book net income -- or net loss of \$3.6 9 million; is that correct?</p> <p>10 A. No, I believe that is an income number.</p> <p>11 Q. Oh, it is an income number?</p> <p>12 A. Right. I think interest income is stated as a 13 credit balance.</p> <p>14 Q. Oh, and the gain is a credit balance as well?</p> <p>15 A. Foreign exchange loss is a debit balance and 16 the write-off of the loan fee would also be a 17 debit balance, which is an expense. Then you 18 have interest expense, which is a debit 19 balance, and professional fees, which are a 20 debit balance.</p> <p>21 Q. So it would have reported, for book purposes, a 22 \$3.6 million gain?</p> <p>23 A. I believe that's right.</p> <p>24 Q. Or net income?</p> <p>25 A. Or \$3.6 million of net income, almost 3.7</p>	<p style="text-align: right;">Page 108</p> <p>1 A. Correct.</p> <p>2 Q. You were responsible for sending this bill out; 3 is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. And you said they eventually paid the entire 6 balance due?</p> <p>7 A. Yes.</p> <p>8 Q. When was it that they paid -- it looks like 9 they made a progress billing of 7/20 of 2000 10 for \$40,000; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. Then when would have K-Pipe made the additional 13 balance of 55,600?</p> <p>14 A. I'm not sure. I don't believe it was too 15 terribly long after we got the returns filed. 16 I don't think it was outstanding for that much 17 time.</p> <p>18 Q. Government Exhibit 242 is a letter from K-Pipe 19 Merger Corporation to Mr. Lacy; is that right?</p> <p>20 A. Correct.</p> <p>21 Q. Who prepared this letter?</p> <p>22 A. I believe that -- well, it was signed by 23 Mr. Austin. I believe that the contents of the 24 letter were prepared by us, requesting that he 25 provide the representations that we requested.</p>
<p style="text-align: right;">Page 107</p> <p>1 million.</p> <p>2 Q. Back on the front page of Government Exhibit 3 239, Lacy had requested that Teig review the 4 revised financial statement, is that right; his 5 last request on that page on the e-mail where 6 he says, "I have attached the revised financial 7 statements"?</p> <p>8 A. Yes.</p> <p>9 Q. Then the next Government Exhibit 240 is the 10 next piece of correspondence. And Mr. Teig 11 says at the top, "It does seem correct. I 12 cannot figure out why it would not be." Is 13 that right? Is he talking about the financial 14 statement there?</p> <p>15 A. I think that's right.</p> <p>16 Q. That's an e-mail from Teig to Lacy dated 9/8 of 17 2000?</p> <p>18 A. And that is subsequent to -- what was his 19 e-mail dated?</p> <p>20 Q. The previous e-mail is --</p> <p>21 A. 9/1?</p> <p>22 Q. 9/7 of 2000.</p> <p>23 A. Or 9/7. Okay, so that would make sense.</p> <p>24 Q. Then Government Exhibit 241 is the invoice from 25 E&amp;Y to K-Pipe Group, correct?</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. So did Mr. Austin or Mr. Teig ever request any 2 changes to the representation letter?</p> <p>3 A. No.</p> <p>4 Q. They signed it and faxed it back to you?</p> <p>5 A. Well, we did not -- they -- we explained to 6 them either through -- probably through an 7 e-mail exactly what we requested they 8 represent, and then they drafted a letter with 9 those representations on them. But there was 10 no discussion regarding the representations 11 that we were requesting.</p> <p>12 Q. On their part?</p> <p>13 A. On their part, correct.</p> <p>14 Q. Then I assume that E&amp;Y relied on these 15 representations in preparing the 1999 tax 16 return for K-Pipe?</p> <p>17 A. We did.</p> <p>18 Q. 244, please, Government Exhibit 244. This 19 appears to be the same memorandum we saw 20 earlier, I think. It may not be. But in any 21 event, it has some handwriting on it. Whose 22 handwriting is on this document?</p> <p>23 A. That was likely whoever prepared the returns. 24 Could have been Bill Lacy's handwriting.</p> <p>25 Q. I assume with all the notations and things that</p>

28 (Pages 106 to 109)

HUNDT REPORTING  
214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 110</p> <p>1 it eventually was put into the tax work papers 2 of Ernst &amp; Young?</p> <p>3 A. Correct.</p> <p>4 Q. Then it has "PBC" on the top. Does that mean 5 prepared by client?</p> <p>6 A. Yes.</p> <p>7 Q. "Summary of tax loss, 144,640,020, was that the 8 loss resulting from the sale of the investments 9 in Petro, Universal and in Canadian dollars?</p> <p>10 A. I think that's what's detailed out there. That 11 looks like a Schedule D analysis.</p> <p>12 Q. The tax loss would roll over to Schedule D of 13 the tax return?</p> <p>14 A. Correct.</p> <p>15 Q. Go to 246, please.</p> <p>16 A. (Witness complies.)</p> <p>17 Q. Looks like an e-mail from -- there's a couple 18 of e-mails, but one was from Teig to you, and 19 then it was forwarded to Mr. Lacy and Ms. Fox. 20 But your instructions "Please copy to the 21 file."</p> <p>22 Mr. Teig, in the initial e-mail to 23 you, says, "Spoke to Fred Forster." Who is 24 Fred Forster?</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">Page 112</p> <p>1 back to, obviously it would have substantial 2 value.</p> <p>3 The same thing with a capital loss, 4 which can only be offset by capital gains. So 5 to the extent a company had capital gains in 6 the future or in the past that they could carry 7 back or carry forward to, it may have some 8 value.</p> <p>9 Q. Teig says, "There is no intention to use the 10 carry-back either forward or back." Was that 11 unusual for a company to not use their 12 carry-back either forward or back?</p> <p>13 A. Well, I think a capital loss is -- it generally 14 has a very short life. I think it's only 15 carried back two years and it has a life of 16 five years carried forward. So if there is no 17 other anticipated capital transactions either 18 backward or forward, then the intention of 19 using the loss may not be there.</p> <p>20 Q. Now, was there any chance that K-Pipe could 21 have used the carry-back with regard to income 22 recognized by Langley in the past two years -- 23 the Bishop Group, I'm sorry, by income 24 recognized by the Bishop Group in the past two 25 years?</p>
<p style="text-align: right;">Page 111</p> <p>1 Q. Then it says, "His thought is not to make the 2 election to forego the carry-back. There is no 3 intention to use the carry-back either forward 4 or back, and Fortrend recognizes the audit 5 risks associated with a carry-back. However, 6 he sees no benefit in making the election now." 7 What was that all about?</p> <p>8 A. I think there was a -- well, there was a 9 capital loss. And it's a standard question, do 10 you wish to carry the loss back, or there is 11 election you can make simply to carry the loss 12 forward, but you have to make it in the 13 originally filed tax return to forego the 14 carry-back.</p> <p>15 Q. And --</p> <p>16 A. So we were just asking, as part of the tax 17 return preparation process, if they desired to 18 make that election. It's a standard question 19 whenever there is an NOL or capital loss.</p> <p>20 Q. Do NOL's and capital losses have some value to 21 taxpayers?</p> <p>22 A. Depends on the circumstances. If there's an 23 expectation of future taxable income, if it's a 24 net operating loss or if there's taxable income 25 in prior years that you can carry that loss</p>	<p style="text-align: right;">Page 113</p> <p>1 A. I don't recall if -- I don't believe the Bishop 2 Group had any capital gains in the previous two 3 years, but I would have to go back and look at 4 the returns to see. But I guess the potential 5 did exist that they could utilize those if they 6 did, but they would have had to have capital 7 gains.</p> <p>8 Q. So Fortrend still had no intention to use that 9 carry-back though; is that right?</p> <p>10 A. Apparently, that's what he's saying.</p> <p>11 Q. They say they recognize an audit risk 12 associated with the carry-back. What was the 13 audit risk?</p> <p>14 A. I don't believe we explored what their audit 15 risk is.</p> <p>16 Q. Was it the risk that the intermediary 17 transaction would be discovered by the IRS?</p> <p>18 MR. STERN: Objection, form.</p> <p>19 A. I have no idea. Again, we were just asking the 20 question as to whether they wanted to make the 21 election. That was our intent there.</p> <p>22 Q. (By Mr. Coffin) 247 is a letter from Ernst &amp; 23 Young to Larry Austin, is that correct, and 24 signed by you?</p> <p>25 A. That's correct.</p>

29 (Pages 110 to 113)

HUNDT REPORTING  
214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 114</p> <p>1 Q. It's a transmittal letter; is that right?    2 A. That is correct.    3 Q. And you are delivering or transmitting the    4 returns that E&amp;Y prepared for K-Pipe Group,    5 Inc., and subsidiaries?    6 A. Right.    7 Q. On the last page of the letter there is a    8 paragraph that says, "Please note that we do    9 not have any" -- "we do not have specific    10 knowledge of the events that gave rise to the    11 amount of the adjusted basis in Petro Holdings,    12 LP, Inc., Universal Merit Securities, Inc., and    13 the investment in Canadian dollars that were    14 contributed to K-Pipe Group, Inc., on November    15 8, 1999."    16 At that point, did you still have some    17 concerns about those transactions?    18 A. Really, that's basically to protect    19 Ernst &amp; Young, you know, in case penalties were    20 ever asserted, in the fact that we advised the    21 client that if they felt that these    22 transactions rose to the level of tax shelter    23 type transactions, that they needed to make    24 adequate disclosure on the tax returns.    25 Q. Is that language --</p>	<p style="text-align: right;">Page 116</p> <p>1 A. No, I have not.    2 Q. Turn to 250, please.    3 A. (Witness complies.)    4 Q. This is a letter from Manatt, Phelps &amp;    5 Phillips, LLP, to Signal Capital Associates,    6 LP, and K-Pipe Merger Corporation, dated    7 November 21 of 2000, regarding "Certain federal    8 income tax consequences of the transfer of    9 assets by Signal Capital Associates, LP, to    10 K-Pipe Merger Corporation."    11 Mr. Snyder, have you ever seen this    12 document?    13 A. No, I have not.    14 Q. Did you ever request from Mr. Teig or anybody    15 at K-Pipe representations or tax opinion    16 letters like this?    17 A. We probably would have. I don't know if we    18 requested those in writing.    19 Q. Did you ever see any drafts of these documents?    20 A. No, I did not.    21 Q. Do you know if anybody at E&amp;Y has seen anything    22 like this?    23 A. I'm not aware that anybody has, no.    24 Q. Look at Government Exhibit 252, please.    25 A. (Witness complies.)</p>
<p style="text-align: right;">Page 115</p> <p>1 A. And ultimately, it's their responsibility if we    2 inform them.    3 Q. Then there is some language or another    4 paragraph below that that talks about the IRS    5 may impose penalties for an understatement of    6 income tax.    7 A. That's fairly standard on all of our    8 transmittal letters.    9 Q. The first paragraph, though, that wasn't    10 necessarily standard, was it, on engagement    11 letters?    12 A. No, that would have been specific to this    13 client.    14 Q. 249, please. This is a letter to Manatt,    15 Phelps &amp; Phillips, LLP, dated November 21 of    16 2000, signed by Jeffrey Furman of Signal    17 Capital Associates, LP. It's regarding    18 representations for tax opinion. It looks like    19 it addresses the federal income tax    20 consequences where SCALP contributed its    21 interest in Petro Holdings, Universal Merit    22 Securities and the Canadian currency to a    23 subsidiary.    24 My question, Mr. Snyder, is, have you    25 ever seen this document before?</p>	<p style="text-align: right;">Page 117</p> <p>1 Q. This is a series of e-mails from Ms. Fox to    2 Mr. Teig, dated January 8, 2001, and it looks    3 like a forwarding of that e-mail to Larry    4 Austin on January 8, 2001. Ms. Fox says to    5 Mr. Teig, "Attached is your draft letter. I    6 have made a few red-line suggestions." Was    7 that the representation letter we saw earlier?    8 A. I'm sorry, you're looking at 252?    9 Q. 252. If you look in the middle of the page,    10 Ms. Fox says, "Attached is your draft letter.    11 I have made a few red-line suggestions."    12 If you look at the top, Mr. Teig is    13 describing to Mr. Austin what the attached    14 letter was. So I think it relates to the --    15 A. No, this relates to -- we had a -- in the haste    16 of getting the returns filed, I think there was    17 a double counting of some of the basis of one    18 of the partnership interests related to the    19 debt, and it overstated -- substantially    20 overstated the capital loss that occurred.    21 Q. Turn to the next page.    22 A. (Witness complies.)    23 Q. 253 would have been the letter I think that has    24 been requested?    25 A. Right.</p>

30 (Pages 114 to 117)

HUNDT REPORTING  
 214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 118</p> <p>1 Q. So there was an overstatement of the capital 2 loss on Schedule D of 69 million? 3 A. Right. 4 And basically, what we requested 5 was -- really, when you knowingly have an 6 overstatement or a change in your capital loss, 7 you're not necessarily required to go back and 8 file an amended return for that loss if it 9 wasn't -- if it did not impact the income tax 10 on the return. You're allowed to simply adjust 11 any carry-forward item or carry-back item that 12 you would have on a subsequent or previous 13 return. 14 So we were just getting confirmation 15 from them that they recognized that there was 16 an overstatement in the haste to get the 17 returns completed, and that if there were any 18 use of that capital loss, that it would be 19 adjusted appropriately. 20 Q. Government Exhibit 254, please. Mr. Snyder, is 21 this the 1999 K-Pipe Group, Inc., and 22 subsidiaries, tax return prepared by your 23 office? 24 A. That's correct. 25 Q. That's your signature at the bottom, correct?</p>	<p style="text-align: right;">Page 120</p> <p>1 144,000,000, how does that roll into the return 2 or how is that presented on the return? 3 A. Let me see. It looks like you have -- -- well, 4 that wouldn't be -- that would be the 5 book-to-tax reconciliation, so that wouldn't 6 tie out to the gain number. 7 Q. So 7649 is not where it would be displayed, is 8 that what you're saying? 9 A. Right. 10 Q. The tax loss is displayed somewhere else in the 11 return? 12 A. I think that's right. 13 Q. Is this something you can tie down in the next 14 few minutes or should we take a break? 15 A. I should be able to tie it down in the next few 16 minutes here. If I can't, we'll take a break. 17 How does that sound? 18 Q. Sounds good. 19 A. I think if you look at -- it would be your 20 7608. 21 Q. DOJ 7608? 22 A. Right. 23 It looks like Schedule D refers back 24 to statement 30 and statement 31. 25 Q. So that statement 30 is DOJ 7652; is that</p>
<p style="text-align: right;">Page 119</p> <p>1 A. It is. 2 Q. Turn to statement 27, I believe. It's DOJ 3 7649, is the Bates number of that document. 4 Are you there? 5 A. Yes. 6 Q. In the middle of the page, Schedule M-1, line 7 8, "Deductions on Return Not Charged Against 8 Book," what does that mean? Deductions, are 9 they income tax deductions that are taken but 10 not charged against book income or loss? 11 A. That's book-to-tax reconciliation, Schedule 12 M-1. 13 Q. That 144,662,975, is that a deduction or a loss 14 or neither? 15 A. That's a reconciliation of the book income to 16 the taxable income or loss, and so that would 17 be a reconciling item. 18 Q. Go back to Government Exhibit 244, keep your 19 finger there. Government 244 was the 20 memorandum that was PBC. 21 A. Okay. 22 Q. On the top right where it says "Summary of Tax 23 Loss" -- 24 A. Right. 25 Q. -- how does that roll, the tax loss, that</p>	<p style="text-align: right;">Page 121</p> <p>1 right? 2 A. Statement 30 and statement 31. It looks like 3 the numbers tied out are a little bit different 4 than what's reported on that schedule. I don't 5 know if that was the final statement or not. I 6 mean, I couldn't sit here probably in 15 7 minutes and tell you what the difference is. 8 Q. So that's where the sale of the shares in Petro 9 Holdings and shares in Universal Merit 10 Securities are reflected, which would roll up 11 to Schedule D of the return? 12 A. That's right. 13 Q. Then where does the foreign currency tax loss 14 show up? That's another 40 million or so? 15 A. I believe that's on statement 4. 16 Q. What is the Bates number? 17 A. 7626. 18 Q. The foreign exchange loss shows up on line 10 19 on front of the return; is that right? 20 A. Well, it would be the sum, it would be the sum 21 of all those. So you would have a negative 22 39,986, and then that's -- it's a consolidated 23 return, so K-Pipe Group, Inc., is one member of 24 the consolidated group, and then you have 25 Bishop Pipeline Company, Bishop Gas</p>

Witness: Bruce Snyder

<p style="text-align: right;">Page 122</p> <p>1   Transmission, Management Resources Group, LTD, 2   that all have other items of income that all go 3   on line 10 as well as part of the consolidated 4   filing. So that would tie -- the 5,931,000 5   would tie to the front of the return, line 10.</p> <p>6        MR. COFFIN: Let's take a quick break. 7        (A recess was taken.)</p> <p>8   Q. (By Mr. Coffin) Let me hand you Government 9   Exhibit 201. I know it's thick. We're not 10   going through all of it. Mr. Snyder, these are 11   notes taken by PWC employees.</p> <p>12   A. Okay.</p> <p>13   Q. I know you haven't seen them, but I just wanted 14   to ask you about some things in here.</p> <p>15        Turn to -- bottom right-hand corner 16        there are some PWC Bates stamps. Turn to PWC 17        1287 please.</p> <p>18   A. Okay.</p> <p>19   Q. There are some notes there, it says "9/10." Do 20   you see that? "Dennis M. Tom Palmisano," says 21   "Seller conferred with EY. Risk to seller. 22   Seller-buyer call on structure plugged in 23   Fortrend." Do you recall having a conversation 24   about risks to Langley with regard to Fortrend?</p> <p>25   A. I don't specifically recall having discussions</p>	<p style="text-align: right;">Page 124</p> <p>1   would imagine.</p> <p>2   Q. Was there some discussion -- everybody agreed 3   to do the standard dog and pony show, do you 4   recall any of that discussion?</p> <p>5   A. I'm not sure what you are referring to.</p> <p>6   Q. Well, No. 1 item, do you see that, "Agree do 7   std dog and pony show." Do you recall those 8   words being used?</p> <p>9        MS. SEABROOK: That may be "dog and 10      pony shoes."</p> <p>11   A. I'm not sure what that is referring to.</p> <p>12   Q. (By Mr. Coffin) But do you recall having a 13   discussion about a dog and pony show in that 14   conversation on August 26?</p> <p>15   A. Not specifically.</p> <p>16   Q. How about generally?</p> <p>17   A. No, not generally either.</p> <p>18        MS. SEABROOK: Do we know whose notes 19      these are?</p> <p>20        MR. COFFIN: I think Gary Wilcox.</p> <p>21   Q. (By Mr. Coffin) Were you aware of any fee 22   that Fortrend was to receive in conjunction 23   with the intermediary transaction that it 24   entered into?</p> <p>25   A. No, I didn't have privy to that information, I</p>
<p style="text-align: right;">Page 123</p> <p>1   regarding risks to Langley, no.</p> <p>2   Q. Generally, do you recall anything?</p> <p>3   A. Not specifically.</p> <p>4   Q. How about generally?</p> <p>5   A. No, not generally.</p> <p>6   Q. On the bottom of that page it says, "Seller 7   asking for incremental consid" -- I assume that 8   means consideration -- "equal to half the 9   step-up."</p> <p>10      Were you aware that Langley was 11      requesting an incremental consideration equal 12      to half the step-up in basis in assets?</p> <p>13   A. No, I wasn't privy to the price negotiations.</p> <p>14   Q. Go to 1297, please.</p> <p>15   A. (Witness complies.)</p> <p>16   Q. At the top it says, "August 26. Steve, Snyder 17   and Fortrend call." Then it says, "No 18   tombstones." Do you see that? Or does it say, 19   "No tomatoes"?</p> <p>20   A. I don't know what it says.</p> <p>21   Q. Do you recall having the conversation with 22   Steve and Fortrend on August 26, phone call or 23   anything?</p> <p>24   A. I think that was probably that call that was 25   referred to in that fax that I received, I</p>	<p style="text-align: right;">Page 125</p> <p>1   was not privy to that information.</p> <p>2   Q. Did you ever become aware that Fortrend 3   received a fee that was a percentage of the 4   step-up in basis in the Bishop Group assets?</p> <p>5        MR. STERN: Objection, form.</p> <p>6   A. No.</p> <p>7   Q. (By Mr. Coffin) Did you ever meet 8   Larry Austin?</p> <p>9   A. No.</p> <p>10   Q. Did you ever talk to Mr. Austin?</p> <p>11   A. I don't believe so.</p> <p>12   Q. Did anybody on your staff?</p> <p>13   A. No, I don't believe so.</p> <p>14   Q. Do you know who owned K-Pipe Group?</p> <p>15   A. I believe it was this SCALP, LP, Limited 16   Partnership, Inc., but I don't recall 17   specifically.</p> <p>18   Q. Did you look at who the principals of SCALP 19   were?</p> <p>20   A. No, I did not.</p> <p>21   Q. Just one more exhibit. Let me hand you what 22   has been marked as Government Exhibit 159.</p> <p>23   Once again, this is not something produced from 24   your office, it's produced by PWC.</p> <p>25        Turn to 369, PWC 369, please.</p>

32 (Pages 122 to 125)

HUNDT REPORTING  
214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 126</p> <p>1 A. (Witness complies.)      2 Q. Do you see those Bates stamps on there?      3 A. Yes.      4 Q. Do you see the comments? About three comments      5 up from the bottom it looks like Mr. Palmisano      6 had an entry on 9/2/99. It says, "Bishop deal      7 cc with drm, rhw, steve corbs, bruce snider re:      8 Cap loss generator." Any idea what a cap loss      9 generator is?      10 A. I think that was something that PWC was      11 pitching to Dennis Langley, as I recall. But I      12 don't believe that there was ever a transaction      13 with respect to a capital loss generator.      14 Q. How did the capital loss generator transaction      15 work?      16 A. I don't recall.      17 Q. You said PWC was pitching that to Langley?      18 A. I think so.      19 Q. Similarly, did PWC pitch the intermediary      20 transaction to Langley?      21 A. I'm not aware that they did specifically.      22 Q. Turn to -- or generally?      23 A. Or generally.      24 Q. Turn to 370, please, PWC 370.      25 A. (Witness complies.)</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. Did that concern you or was that a concern of      2 yours at the time?      3 A. I mean, again, the tax return is not an audited      4 document, it's representations taken by the      5 taxpayer.      6 Q. But there had to be a reason why you may have      7 asked for additional information.      8 A. Well, I think you have to use some type of      9 reasonableness and you have to ask the      10 appropriate questions, if you receive      11 information that may not be correct or may not      12 be intended.      13 Q. Did you come to the conclusion then that they      14 were correct or did you just accept the      15 representations provided by Mr. Teig and      16 Mr. Austin?      17 A. I accepted the representations made by the      18 taxpayer.      19 Q. Did you have any concern at all in signing the      20 tax return because of those high basis assets?      21 A. No, because, again, I felt like the -- like we      22 had done our diligence to the extent it needed      23 to be done with respect to making inquiries.      24 MR. COFFIN: I'll pass the witness.      25 EXAMINATION BY MR. STERN:</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. There's an entry by Mr. Palmisano, it's the      2 last entry on that page, on 9/24/99, under      3 Comments. If you look, you'll see beginning      4 with the third line from the bottom it says,      5 "cc with rr/ck re: Alternative structure      6 proposed by EY." Was there a structure being      7 proposed by Ernst &amp; Young around that date?      8 A. I don't recall what that would have been.      9 Q. So the answer is no or yes?      10 A. The answer is I don't remember.      11 That could have been on the      12 disposition of unwanted assets, but I'm not      13 sure. He mentions 311 b issue up here.      14 Q. Who does, Mr. Palmisano does in his Comments?      15 A. Right.      16 Q. Mr. Snyder, when we look at those exhibits that      17 showed the high tax basis and the Petro      18 Holdings and the other interests, do you recall      19 those?      20 A. Yes.      21 Q. Did you ever inquire as to how those      22 contributed assets had such high tax basis?      23 A. I may have asked some questions on the matter.      24 I don't know if I ever got finality of an      25 answer.</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. While we're on the subject of the basis, the      2 high basis in those assets, what was the      3 significance of that basis to the K-Pipe tax      4 returns that you prepared?      5 A. The significance of the basis?      6 Q. Kind of a general concept.      7 A. Well, the significance of the basis is that the      8 basis is used for determining the gain or loss      9 in the subsequent sale of those assets, which      10 needs to be reflected on the tax return.      11 Q. As I understand it, in the tax return there was      12 a substantial loss associated with the sale of      13 those assets?      14 A. Correct.      15 Q. What gain did those losses offset? General      16 concepts.      17 A. They would have offset the sale of the      18 partnership interests.      19 Q. When you say "sale of the partnership      20 interests," you're talking about the sale of      21 the Bishop Group partnership interests to      22 Midcoast?      23 A. Correct.      24 Q. And you attempted to gather whatever      25 information you could regarding that basis and</p>

33 (Pages 126 to 129)

HUNDT REPORTING  
 214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 130</p> <p>1 the legitimacy of those losses?      2 A. Yes.      3 Q. And in the end, you relied on the      4 representations of the taxpayer?      5 A. Correct.      6 Q. And if the basis was subject to challenge and      7 was not, in fact, legitimate, what would happen      8 to the tax liability of the taxpayer, K-Pipe?      9 A. If the losses were disallowed?      10 Q. Yes. That's a better way of saying it.      11 A. If the losses were disallowed, I think there      12 would be a tax liability associated on that      13 return.      14 Q. And the tax liability would have been      15 associated with the sale of the partnership      16 interests to Midcoast?      17 A. Correct.      18 Q. Now, in reading -- we can go back and look at      19 it, but in reading your engagement letter, it      20 appeared that there were provisions in the      21 engagement letter, looked like standard stuff,      22 but to the extent there was any challenge by      23 the Internal Revenue Service to the tax      24 returns, that your firm was available to      25 provide certain services?</p>	<p style="text-align: right;">Page 132</p> <p>1 played out. At some point in 2004, Mr. Dick      2 called you and requested certain information      3 from you so that K-Pipe could respond to an IRS      4 summons?      5 A. Yeah. And 2004 may not be the right date. It      6 seemed like to me it was -- there was a lot of      7 information gathering first on his behalf, and      8 then also I was the subject or our firm was the      9 subject of an IRS summons with respect to the      10 Bishop Group and the tax return work papers, et      11 cetera.      12 Q. And it was in connection with that second      13 information gathering effort by the IRS that      14 you gave your interview that was transcribed?      15 A. I was subpoenaed.      16 Q. You were subpoenaed?      17 A. Right.      18 Q. But it was about the same time as the summons      19 directed to Ernst &amp; Young?      20 A. It was subsequent to the summons.      21 Q. So as far as post-return activity by Ernst &amp;      22 Young, there was responding to Mr. Dick's      23 requests for information?      24 A. Yes.      25 Q. There was responding to the IRS's summons to</p>
<p style="text-align: right;">Page 131</p> <p>1 A. Right.      2 Q. Were you ever called upon by K-Pipe to provide      3 services in connection with any audit or      4 challenge by the IRS to those returns?      5 A. Yes.      6 Q. When?      7 A. It would have been probably in sometime during      8 2004.      9 Q. I've seen --      10 A. I believe there was a gentleman by the name      11 of -- it was an attorney that was representing      12 K-Pipe pursuant to an IRS examination. I      13 believe his name was -- Randall Dick was his      14 name. And he requested certain information      15 pursuant to a document request that the service      16 had received.      17 Q. We've seen some notations on some of these      18 documents, 3 of 4, 4 of 4, and I think you made      19 reference to requests from the IRS. Were those      20 documents that you generated in connection with      21 those requests?      22 A. Either pursuant to that request or I did      23 receive a separate summons from the Internal      24 Revenue Service for our work papers.      25 Q. Let me make sure I understand exactly how that</p>	<p style="text-align: right;">Page 133</p> <p>1 Ernst &amp; Young directly?      2 A. Yes.      3 Q. And preparation for and participation in your      4 interview?      5 A. Yes.      6 Q. Anything else?      7 A. With respect to K-Pipe?      8 Q. Yes.      9 A. No.      10 Q. In connection with the information gathering,      11 were you, and others at Ernst &amp; Young that you      12 are aware of, gathering factual information      13 such as documents and providing data as opposed      14 to doing some sort of independent analysis and      15 providing advice?      16 A. We were generally gathering information in      17 response to the document request and also the      18 summons. We were not providing technical tax      19 advice, no.      20 Q. With respect to either the stock sale from      21 Mr. Langley to K-Pipe or the separate asset      22 partnership interest sale from K-Pipe to      23 Midcoast, have you been involved in any other      24 activity generated by the IRS?      25 A. I'm sorry, I don't understand the question.</p>

34 (Pages 130 to 133)

HUNDT REPORTING  
214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 134</p> <p>1 Q. Well, I thought you qualified one of your 2 earlier answers that suggested to me that maybe 3 there was -- I don't know whether there was 4 some activity surrounding Mr. Langley or -- 5 A. No, I did -- I think it was referred to here in 6 the Kyle Klein entry. We did some work for one 7 of Mr. Langley's other companies. I think he 8 was looking at another acquisition, that was 9 completely unrelated to this -- this 10 transaction and this tax return filing, that 11 was completely separate, and that was in that 12 next year. 13 Q. Do you currently have or does Ernst &amp; Young 14 currently have any relationship with K-Pipe? 15 A. No, other than an outstanding invoice for the 16 data collection and these services. 17 Q. What about Midcoast? 18 A. No. 19 Q. Have you ever had any client-accountant client 20 relationship with Midcoast? 21 A. Not that I'm aware of. I don't know if there 22 is any relationship in our Houston office, and 23 I haven't run that check, but there's no 24 relationship with the Kansas City office. 25 Q. So as far as you sitting here today, you're not</p>	<p style="text-align: right;">Page 136</p> <p>1 that Fortrend or K-Pipe was a PWC client? 2 A. No, I don't recall that. 3 Q. Do you recall whether anyone made any 4 statements or representations to you that 5 Fortrend or K-Pipe had some affiliation with 6 Midcoast? 7 A. I don't recall that either. 8 Q. Did anyone ever suggest to you that Fortrend or 9 K-Pipe were a Midcoast agent? 10 MR. COFFIN: Objection, form. 11 A. I don't recall that either. 12 Q. (By Mr. Stern) Throughout the Ernst &amp; Young 13 time entries there are instances where there 14 are references to an intermediary transaction 15 or a midco. Do you recall we saw those? 16 A. Yes. 17 Q. I'm not a tax lawyer, so I may not say this 18 right, so you can just correct me if I'm wrong. 19 But as I understand it, there was an IRS notice 20 that related to intermediary transactions in 21 2001? 22 A. Yes, I believe that's right. 23 Q. And to the extent there was a notice issued by 24 the IRS, it defined what was meant in that 25 notice by intermediary transactions?</p>
<p style="text-align: right;">Page 135</p> <p>1 aware of any relationship? 2 A. No. 3 Q. What about with Enbridge Energy or any of its 4 affiliated companies? 5 A. Not that I'm aware of. 6 Q. During questioning from Mr. Coffin and your 7 initial interview with -- I think it was 8 Ms. Creswell (ph.)? 9 A. Yes. 10 Q. There has been some discussion about who PWC -- 11 who was PWC's client. 12 A. Correct. 13 Q. I think the bottom line is, you are not sure 14 who their client was? 15 A. I think my representation is it was either/or. 16 Q. It was either K-Pipe? 17 A. Either K-Pipe or Fortrend or perhaps both, I 18 don't know. 19 Q. K-Pipe or Midcoast? 20 A. I'm sorry, Midcoast or Fortrend, which I also 21 understand to be K-Pipe. 22 Q. Fortrend you also understand to be K-Pipe? 23 A. Correct. 24 Q. Did Mr. Palmisano or anyone else from PWC ever 25 tell you, make any statements to the effect,</p>	<p style="text-align: right;">Page 137</p> <p>1 A. I think that's right. 2 Q. And to the extent, in 1999 and 2000, there were 3 entries in Ernst &amp; Young time records regarding 4 "intermediary transactions," do you know 5 whether you or anyone else at Ernst &amp; Young had 6 in their mind the specific definition adopted 7 by the Internal Revenue Service in 2001? 8 A. Well, I think the Internal Revenue Service 9 notice refers to transactions or substantially 10 similar transactions. So my -- I believe that 11 our -- at least our national merger and 12 acquisitions group had knowledge that these 13 types of transactions existed, or substantially 14 similar transactions existed, prior to the 15 notice. I would be very surprised if that 16 weren't the case. 17 Q. During some questioning from Mr. Coffin there 18 was some back-and-forth about whether or not 19 Ernst &amp; Young was going to issue an opinion, a 20 tax opinion, in connection with the 21 Langley-Fortrend transaction. 22 A. Correct. 23 Q. I may just have misunderstood. There were some 24 instances where I thought you were saying that 25 EY just doesn't issue an opinion about a</p>

Witness: Bruce Snyder

<p style="text-align: right;">Page 138</p> <p>1 transaction that's not finalized; and then    2 there were other instances where I thought you    3 were saying that you may have had concerns    4 about Fortrend specifically. And let me just    5 put in context my question.</p> <p>6 I couldn't understand, if you just    7 have a rule that you don't issue those types of    8 opinions, why concerns about Fortrend would    9 even be relevant. So if you could maybe    10 explain. Did I miss something?</p> <p>11 A. I think what you're asking is the specific    12 concern regarding Fortrend was that they    13 represented to us that they had worked on other    14 deals with Ernst &amp; Young, and in checking with    15 the people named on that fax there was no such    16 relationship. So that caused a concern.</p> <p>17 And then with respect to opinions,    18 which I think is the other part of your    19 question, we will agree to issue an opinion on    20 a transaction. We will not formally issue that    21 opinion until after the transaction has closed.</p> <p>22 Q. So you may negotiate and work with your client    23 on the form of the opinion and have it in a    24 draft form?</p> <p>25 A. Potentially.</p>	<p style="text-align: right;">Page 140</p> <p>1 A. Correct.    2 Q. That's what you do every time you prepare tax    3 returns?    4 A. Correct.    5 Q. That's why people hire you, right?    6 A. I hope so.    7 Q. And to your knowledge, the tax returns did    8 properly reflect the sale of the partnership    9 interests from K-Pipe to Midcoast?    10 A. To the best of my knowledge, correct.    11 Q. And to your knowledge, there was no stock sale    12 by K-Pipe to Midcoast?    13 MR. COFFIN: Objection, form.    14 A. No, it was our understanding there was an asset    15 sale.    16 Q. (By Mr. Stern) And to the extent you had    17 knowledge of the transaction between    18 Mr. Langley and K-Pipe, was that a stock sale    19 or an asset sale?    20 A. It was essentially a stock sale.    21 Q. I thought you testified to this, and I may be    22 wrong, but did you say that you understood that    23 Mr. Langley was intent on selling the Bishop    24 Group pursuant to a stock sale as opposed to an    25 asset sale?</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. And that frequently happens?    2 A. Yes.    3 Q. Then when the transaction closes, you'll    4 actually issue the opinion?    5 A. Right.    6 And now there's -- under circular 230    7 there are specific requirements and due    8 diligence processes in place with respect to an    9 opinion that have to be taken into account.    10 Q. Mr. Coffin also asked you some questions about    11 why the parties might have wanted Ernst &amp; Young    12 to prepare the K-Pipe tax return for '99. And    13 I thought he was suggesting that that    14 motivation was that the parties wanted the tax    15 return to properly reflect the partnership sale    16 to Midcoast, the sale of the partnership    17 interest to Midcoast. Do you recall those    18 questions?    19 A. Yes.    20 Q. Isn't that what you tried to do?    21 A. The intent is to reflect, appropriately    22 reflect, the sale -- all transactions within    23 the tax return that we have knowledge of and    24 were provided information for.    25 Q. That's your job, right?</p>	<p style="text-align: right;">Page 141</p> <p>1 A. I think he had been reviewing a lot of    2 alternatives over the last couple of years that    3 I knew of to dispose of the Bishop Group    4 business in some liquidating transaction.    5 Q. And by the summer of 1999, you understood that    6 he was pursuing a stock sale?    7 A. I couldn't say specifically that he was    8 pursuing a stock sale. I think he was pursuing    9 a transaction.    10 Q. Why would a seller pursue a stock sale as    11 opposed to an asset sale?    12 A. In the context of a C corporation?    13 Q. Yes.    14 A. Because generally, on a stock sale, you would    15 avoid the double taxation which would be caused    16 by the subsequent liquidation of the C    17 corporation proceeds back to the shareholder.    18 Q. Why would a buyer -- what are the reasons that    19 a buyer would prefer an asset sale?    20 A. If there were a -- well, again, in the context    21 of a C corporation, if the assets to be    22 acquired have substantial increase in fair    23 market value over basis, then the buyer would    24 want the assets in order to be able to    25 depreciate or amortize those assets and receive</p>

36 (Pages 138 to 141)

HUNDT REPORTING  
 214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 142</p> <p>1 the tax benefit of the purchase price.      2 Q. Are there any other reasons why a purchaser      3 would prefer an asset purchase over a stock      4 purchase?      5 MR. COFFIN: Objection, form.      6 A. I think there would be a lot of legal reasons.      7 Q. (By Mr. Stern) Like potential liabilities?      8 A. You would know better than I.      9 Q. You have been involved in a number of      10 transactions?      11 A. Sure.      12 Q. You understand that -- you've observed what      13 parties consider to be important as they enter      14 into transactions like this?      15 A. Right.      16 Q. Are those types of liabilities the sort of      17 things that buyers typically are concerned      18 about or at least want to consider in either      19 doing an asset or a stock deal?      20 MR. COFFIN: Objection, form.      21 A. Yes.      22 Q. (By Mr. Stern) Have you been involved in      23 transactions where someone other than your      24 client pays your fees?      25 A. I don't recall that I have.</p>	<p style="text-align: right;">Page 144</p> <p>1 Mr. Hoffman to Mr. Snyder -- or to you, dated      2 March 21, 2000, where there's a statement --      3 A. Still getting there. I'm a little slow. Okay.      4 Q. Do you see there in the middle there's a      5 statement by Mr. Hoffman, "There have been no      6 revenue activities and we do not expect that      7 there will be any taxable income for the period      8 between the closing date and the 12/31/99"; do      9 you see that?      10 A. Yes.      11 Q. When you were responding to questions from      12 Mr. Coffin, I thought you left open the      13 possibility that either in your conversations      14 with Mr. Teig or through other information that      15 you gathered after receiving this that you may      16 have learned whether this was incorrect or      17 correct.      18 A. Well, the context of this was just simply to      19 get an estimate of taxable income for the year      20 so that we could file extensions. It wasn't to      21 nail down information to prepare the tax      22 returns. So this was just for estimate      23 purposes only in order to get a good extension      24 number so we weren't underpaid.      25 Q. Do you know whether there was any revenue</p>
<p style="text-align: right;">Page 143</p> <p>1 Q. To your knowledge, did Mr. Langley sell stock      2 to Midcoast?      3 A. I don't believe so.      4 Q. What are post-closing adjustments?      5 A. Post-closing adjustments?      6 Q. Yes.      7 A. They are generally adjustments to the purchase      8 price based upon an audit of financial      9 statements for working capital, whatever the      10 case may be, which can't be reconciled prior to      11 the deal closing.      12 Q. Were there post-closing adjustments that you're      13 aware of between K-Pipe and Langley?      14 A. There may have been. I don't specifically      15 recall what those might have been.      16 Q. We'll look at some documents in a minute.      17 Do you remember whether there were      18 post-closing adjustments between K-Pipe and      19 Midcoast?      20 A. Again, I don't recall whether there were or      21 not.      22 Q. I'm going to bounce around a little bit. Let's      23 go through these documents.      24 Let's look at Government Exhibit 228.      25 Mr. Coffin showed you this e-mail from</p>	<p style="text-align: right;">Page 145</p> <p>1 activity for the period between the closing      2 date and 12/31/99?      3 A. Well, I think we discussed earlier that      4 documented income statement and balance sheet      5 and all those entries. There were some booked      6 gains and losses. Obviously, there were a lot      7 of tax gains and losses on the -- that were      8 later reflected as a result of all those      9 transactions that we previously discussed.      10 So I think his statement there either      11 is incorrect or he was just referring to the      12 fact that there was no items that gave      13 significant rise to income that would have      14 created us -- that would have required us to      15 increase our expected extension payment.      16 Q. If you could look at Exhibit 233, which is the      17 August 22, 2000, memo from Howard Teig to Bill      18 Lacy and Shari Fox.      19 A. Okay.      20 Q. On the third page there is a reference to, at      21 the bottom, to the sundry cash payments?      22 A. I'm sorry, where are you at?      23 Q. The third page, bottom of the page, very      24 bottom.      25 A. Is that 3 of 7 or 4 of 7?</p>

37 (Pages 142 to 145)

HUNDT REPORTING  
 214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 146</p> <p>1 Q. 4 of 7.    2 A. Okay.    3 Q. Sundry payments, \$5,000,000, very bottom?    4 A. The 5,072,753?    5 Q. Right.    6 A. Right.    7 Q. "Distribution to SCALP, 2,902,000," do you know    8 what that is?    9 A. I assume that was some type of dividend    10 distribution.    11 Q. If you could look at Exhibit 250. I may need    12 to take a break for this. But this is the    13 Manatt Phelps opinion letter?    14 A. Exhibit 250?    15 Q. Yes, Government Exhibit 250.    16 A. Okay.    17 Q. Have you had an opportunity to read this    18 document?    19 A. No, I haven't.    20 Q. You may just have to look at the opinions,    21 which I think start at page marked DOJ 15270,    22 second to the last and last page, but you can    23 read whatever you want to read.    24 My question would be whether there is    25 anything in this document that's inconsistent</p>	<p style="text-align: right;">Page 148</p> <p>1 request that I review their opinion and make    2 sure that it's consistent with the tax return,    3 then I don't have an obligation. It's really    4 the taxpayer's obligation to decide whether or    5 not the information reflected in the tax return    6 is -- corresponds to the opinion that they    7 received, and the representations that they    8 provided to me correspond to the opinion that I    9 received.    10 Q. (By Mr. Stern) We're not talking about whose    11 obligations -- who had what obligation to do    12 what.    13 I'm asking you to look at the letter    14 and let me know if there's anything that jumps    15 out at you as being inconsistent with the    16 positions that are taken in the K-Pipe return.    17 We're not holding you to the standard of an    18 opinion that you would issue, I just want to    19 know if there is anything that jumps out at you    20 as you look at this that is inconsistent with    21 your understanding of the K-Pipe return.    22 MR. COFFIN: Objection, form.    23 THE WITNESS: Am I required to do    24 that?    25 MS. SEABROOK: He's asked you the</p>
<p style="text-align: right;">Page 147</p> <p>1 with the positions that were taken in the    2 K-Pipe return that Ernst &amp; Young prepared.    3 MR. COFFIN: Objection, form.    4 A. Without reading -- without analyzing the    5 document -- I guess I don't care necessarily to    6 analyze this document to try to make that    7 determination.    8 Q. (By Mr. Stern) Well, what would you have to    9 analyze?    10 A. Well, I think you would have to -- I didn't    11 realize this opinion existed.    12 Q. No, I understand that. And there is -- well, I    13 would like to avoid the suggestion that there    14 is anything nefarious about that. If you    15 can -- there are specific opinions that are set    16 forth, there are also factual assumptions set    17 forth in this document. I'm not asking you to    18 endorse the opinion, but if you could look at    19 it and tell me whether anything jumps out at    20 you as being inconsistent with the positions    21 that you understand were taken in the K-Pipe    22 return.    23 MR. COFFIN: Objection, form.    24 A. Well, I think it's the taxpayer's -- if he    25 didn't -- if the taxpayer didn't specifically</p>	<p style="text-align: right;">Page 149</p> <p>1 question. Why don't we take a few minutes off    2 the record. Why don't we give Bruce a couple    3 of minutes to look through it.    4 (A recess was taken.)    5 MR. COFFIN: I want to keep my    6 objection to form.    7 MR. STERN: What is your objection to    8 form?    9 MR. COFFIN: It is who -- you said    10 K-Pipe's -- or you said positions on the tax    11 return. I don't know whose positions you are    12 referring to.    13 MR. STERN: The positions on the tax    14 return. I think the judge will understand    15 that.    16 Q. (By Mr. Stern) Have you had a chance to review    17 Exhibit 250, Government Exhibit 250?    18 A. Yes.    19 Q. I believe my question was whether anything    20 jumped out at you that was inconsistent with    21 the positions taken in the K-Pipe tax return    22 for 1999.    23 MR. COFFIN: Same objection.    24 A. No, nothing jumps out at me, other than the    25 numbers being just a little bit different.</p>

Witness: Bruce Snyder

<p style="text-align: right;">Page 150</p> <p>1 Q. (By Mr. Stern) Is it a material difference?    2 A. Couple of million here or there, I think.    3 Q. In the tax return itself, 254, there is    4 Schedule J -- Schedule K, which is on the same    5 page as Schedule J. Are you there?    6 A. Yes.    7 MR. COFFIN: What Bates number is    8 that?    9 MS. SEABROOK: 7606.    10 Q. (By Mr. Stern) Paragraph 3, "At the end of the    11 tax year did the corporation own, directly or    12 indirectly, 50 percent or more of the voting    13 stock of a domestic corporation?" Then it    14 says, "Statement 10." So we would have to look    15 at Statement 10 for the answer to that    16 question?    17 A. "At the end of the tax year did the corporation    18 own, directly or indirectly, 50 percent or more    19 of the voting stock of a domestic corporation?"    20 So the answer is yes. And statement 10...    21 Q. Can you find statement 10? It's 7632.    22 A. Okay.    23 Q. This statement 10 would be a list of the    24 entities that K-Pipe owned 50 percent or more    25 of at the end of the tax year -- corporations</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. Do you know whether the Butcher Interest    2 transaction was treated as a disguised sale in    3 these tax returns?    4 A. Again, I don't recall.    5 Q. How would we figure that out?    6 A. It may be -- it may be in part of the income    7 from the partnerships, but I just don't recall    8 exactly where that would be.    9 Q. So sitting here today, you don't know how we    10 could specifically figure that out?    11 A. I don't know specifically.    12 Q. Generally?    13 A. Or generally, other than going back through    14 detailed work papers, how we could figure that    15 out, no.    16 Q. Do you know who did Dennis Langley's personal    17 tax returns?    18 A. I believe it was someone at Meara King.    19 Q. Did you interface with them at all in    20 connection with the stock sale to K-Pipe?    21 A. Very briefly. I remember we provided some    22 information and I can't remember even what it    23 was about. I think it was a person by the name    24 of Julie Welch.    25 Q. This is my last question, unless I think of</p>
<p style="text-align: right;">Page 151</p> <p>1 that K-Pipe owned 50 percent or more of the    2 voting stock of at the end of the tax year?    3 A. Correct.    4 Q. And there is either income or loss attributable    5 to each of these?    6 A. Yes.    7 Q. Do you know what the activities in each of    8 these entities was at the end of 1999?    9 A. I believe that most of these were simply    10 holding companies. I believe -- if I recall    11 back, Bishop Pipeline Company and Bishop Gas    12 Transmission generally held the partnership    13 interests, and the gas pipeline operations were    14 through the partnerships.    15 Q. What about Management Resources Group, Limited?    16 A. I don't recall exactly what that one did. It    17 did not -- I don't believe it had a lot of    18 activity.    19 Q. Do you recall, while we have got the return,    20 Mr. Coffin asked you some questions about the    21 Butcher Interest. And I think there was a tax    22 code provision, which I can look up, but    23 dealing with something called a disguised sale.    24 Do you recall that?    25 A. Yes.</p>	<p style="text-align: right;">Page 153</p> <p>1 something else. But in response to one of    2 Mr. Coffin's questions about your early contact    3 with Fortrend where Mr. Palmisano was a    4 participant in the call --    5 A. Correct.    6 Q. -- I think you made some statement that you    7 either assumed or you may have stated that    8 Palmisano had worked for Fortrend in the past?    9 A. I believe that I made the statement that he    10 appeared to at least be an advocate of Fortrend    11 or worked with Fortrend in the past.    12 Q. Do you have any knowledge that he worked with    13 Fortrend in the past?    14 A. No, not specifically.    15 Q. Generally?    16 A. Generally, no. I don't know if there is any    17 general knowledge in that instance.    18 MR. STERN: I'll pass the witness.    19 RE-EXAMINATION BY MR. COFFIN:    20 Q. Just a couple of follow-up questions,    21 Mr. Snyder.    22 I am sorry to dwell on this, but    23 again, on the tax opinion that we talked about    24 earlier where E&amp;Y was requested to provide a    25 tax opinion letter on the transaction -- and</p>

39 (Pages 150 to 153)

HUNDT REPORTING  
 214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 154</p> <p>1 that would have been the stock sale, is that 2 right, to K-Pipe?</p> <p>3 A. Or to Fortrend at the time.</p> <p>4 Q. Or to Fortrend at the time, okay.</p> <p>5 And you said earlier there were two 6 reasons it wasn't issued: No. 1, you said 7 because Ernst &amp; Young does not issue tax 8 opinions for transactions that haven't closed; 9 and the other reason I think you said is you 10 weren't comfortable with Fortrend's 11 representations. Is that correct?</p> <p>12 A. (Witness nods head.)</p> <p>13 Q. In this case, had you been comfortable with 14 Fortrend's representations, would the firm have 15 gone ahead and agreed to provide the tax 16 opinion letter?</p> <p>17 A. I don't recall whether we would have or not.</p> <p>18 Q. But it certainly wasn't a limitation that the 19 transaction hadn't closed yet, because had you 20 been comfortable with all the circumstances, 21 you would have --</p> <p>22 A. We may have decided --</p> <p>23 MR. STERN: Let me object to the 24 question once he finishes, if I could.</p> <p>25 A. We may have decided to --</p>	<p style="text-align: right;">Page 156</p> <p>1 timing matter, too --</p> <p>2 Q. Oh, you mean they needed one quickly?</p> <p>3 A. -- with how quickly they wanted the opinion.</p> <p>4 And I don't know if it was a matter of they 5 wanted the opinion before the transaction 6 closed or not, which we would not issue a 7 formal opinion prior to that time. We may 8 agree to issue one, but we wouldn't issue it 9 prior to the closing.</p> <p>10 Q. Back on the tax return, Government Exhibit 254, 11 back to schedule K, which is DOJ 7632, 12 statement 10, Mr. Stern was discussing those 13 entities listed on Schedule K.</p> <p>14 A. Let me get back there.</p> <p>15 Q. It's the 7632.</p> <p>16 A. Yes.</p> <p>17 Q. Those income and loss amounts that are listed 18 there, do you recall Mr. Stern asking you about 19 those? Do you recall that questioning?</p> <p>20 A. Yes.</p> <p>21 Q. That was income or loss that would have been 22 recognized prior to the sale of stock -- or I'm 23 sorry, prior to the sale of assets to Midcoast, 24 correct?</p> <p>25 A. No, that should have been for the entire year.</p>
<p style="text-align: right;">Page 155</p> <p>1 MR. STERN: Now, hold on. 2 Objection, leading.</p> <p>3 I didn't think he finished his 4 question. And I apologize for interrupting so 5 much.</p> <p>6 MS. SEABROOK: What was the question?</p> <p>7 A. Who is talking now?</p> <p>8 Q. (By Mr. Coffin) Was it a true limitation that 9 the transaction hadn't closed yet that would 10 have prevented Ernst &amp; Young from issuing the 11 tax opinion letter?</p> <p>12 A. As I said, it was a matter of we may have 13 agreed to issue an opinion, and I think that's 14 the question you're asking, but in this case we 15 agreed not to issue an opinion -- or not to 16 pursue trying to issue an opinion on the 17 transaction.</p> <p>18 Q. Was the reason based upon the fact that you 19 were not comfortable with Fortrend's 20 representations?</p> <p>21 A. I think that probably had something to do with 22 it.</p> <p>23 Q. Were there any other limitations you can think 24 of why --</p> <p>25 A. Well, I mentioned earlier I thought it was a</p>	<p style="text-align: right;">Page 157</p> <p>1 Q. Through December 31?</p> <p>2 A. Right.</p> <p>3 Q. Now, if they sold the assets to those entities, 4 how could they still recognize income or loss?</p> <p>5 A. Well, this would have been income for the 6 entire year. So it would have been income 7 pre-transaction and post-transaction as well. 8 So all the operations of the partnerships that 9 flowed up to these companies would have been in 10 those numbers.</p> <p>11 And also, any ordinary income 12 recognized on the sale itself of the 13 partnership interest would be included in those 14 numbers.</p> <p>15 Q. I see. So the operations, would they have 16 necessarily ceased on November 9th of 1999?</p> <p>17 A. They would have transferred to the buyer at 18 that point in time.</p> <p>19 Q. Which was Midcoast?</p> <p>20 A. Or the operations would not have ceased, no, 21 because I believe the partnership interests 22 were acquired, so they would have stayed 23 intact.</p> <p>24 Q. Who are you referring to as the buyer then?</p> <p>25 A. The buyer of the assets --</p>

40 (Pages 154 to 157)

HUNDT REPORTING  
214-220-1122

Witness: Bruce Snyder

<p style="text-align: right;">Page 158</p> <p>1 Q. Yes.      2 A. -- or the buyer of the partnership interests?      3 Q. Yes.      4 A. It would have been Midcoast Energy.      5 Q. So if the partnership interests transferred to      6 Midcoast, then K-Pipe would not have recognized      7 income after that date from those operations?      8 A. Not from the operations, that's correct.      9 Q. But from the gain or loss from the sale of      10 those partnership interests?      11 A. Right.      12 MR. COFFIN: Pass the witness.      13 RE-EXAMINATION BY MR. STERN:      14 Q. You don't specifically know what generated that      15 income and whether it was before or after the      16 disposition of the partnership interests to      17 Midcoast?      18 A. On this schedule?      19 Q. Yes.      20 A. Well, this income should all be reflected on      21 the consolidated return, because these are all      22 consolidated group members listed here.      23 Q. No, I understand that. But to the extent there      24 were assets retained by K-Pipe that weren't      25 transferred to Midcoast, there may be income</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. Is there a distinction for the Internal Revenue      2 Code for that or is there a reason why or are      3 you trying to be more specific than general?      4 A. I'm trying to be more specific, because the      5 transaction was structured as a sale of      6 partnership interests, and generally, I think      7 the tax treatment is relatively the same.      8 MR. COFFIN: No further questions.      9 MR. STERN: Nothing for now.      10 (The deposition concluded at 3:48      11 p.m.)      12      13      14      15      16      17      18      19      20      21      22      23      24      25</p>
<p style="text-align: right;">Page 159</p> <p>1 associated with that or loss associated with      2 that?      3 A. There could have been other things flowing      4 through.      5 Q. So to specifically say that this income was pre      6 or post closing of the partnership sale to      7 Midcoast, you really can't say specifically?      8 A. No, this would have reflected income for the      9 entire year.      10 (Snyder Deposition Exhibit No. 1 was      11 marked for identification.)      12 Q. (By Mr. Stern) I have marked this as Snyder 1.      13 This is a fax from Howard Teig to Shari Fox and      14 it has some working capital account data. Do      15 you see that? Does this look familiar to you?      16 A. No, it really doesn't. I don't recall -- I      17 don't recall this work paper.      18 Q. We'll ask Shari tomorrow.      19 MR. STERN: Pass the witness.      20 FURTHER EXAMINATION BY MR. COFFIN:      21 Q. Mr. Snyder, just one quick question.      22 In your testimony you have been      23 distinguishing I think between a sale of assets      24 and a sale of partnership interests.      25 A. Right.</p>	<p style="text-align: right;">Page 161</p> <p>1 RE: Enbridge Energy, vs. United States      2 PG/LN Correction Reason      3 _____      4 _____      5 _____      6 _____      7 _____      8 _____      9 _____      10 _____      11 _____      12 _____      13 _____      14 _____      15 _____      16 _____      17 _____      18 _____      19 _____      20 _____      21 _____      22 _____      23 _____      24 _____      25 GLR</p> <p style="text-align: right;">BRUCE SNYDER</p>

Witness: Bruce Snyder

Page 162

1 RE: Enbridge Energy, vs. United States  
2

3 \_\_\_\_\_ I certify that I have read my testimony  
4 and request that NO changes be made.  
5

6 \_\_\_\_\_ I certify that I have read my testimony  
7 and request that the above changes be  
8 made.  
9

10

11

12

BRUCE SNYDER

13

14

15 Subscribed and sworn to before me this \_\_\_\_\_  
16 day of \_\_\_\_\_, 2007.  
17

18

19

20 Notary Public  
21 State of \_\_\_\_\_  
22 County of \_\_\_\_\_  
23 My Commission Expires \_\_\_\_\_  
24 GLR  
25

Page 163

1 C E R T I F I C A T E  
2

3 I, Gail L. Riede, a Certified Court Reporter of  
4 the State of Missouri, do hereby certify:

5 That prior to being examined, the witness was  
6 first duly sworn;

7 That said testimony was taken down by me in  
8 shorthand at the time and place hereinbefore stated  
9 and was thereafter reduced to typewriting under my  
10 direction;

11 That the foregoing transcript is a true record  
12 of the testimony given by said witness;

13 That I am not a relative or employee or  
14 attorney or counsel of any of the parties or a  
15 relative or employee of such attorney or counsel or  
16 financially interested in the action.

17 Witness my hand and seal this 13th day of  
18 February, 2007.  
19  
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23 Gail L. Riede  
24 Missouri Supreme Court  
25 Certified Court Reporter (G)

42 (Pages 162 to 163)

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214-220-1122